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(See additional parties on next page)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
and STATE OF CALIFORNIA)	
DEPARTMENT OF TOXIC)	
SUBSTANCES CONTROL,)	CIV. NO.:
)	
Plaintiffs,)	
)	
v.)	CONSENT DECREE
)	
AC PRODUCTS, INC., et al.)	
)	
Defendants.)	
)	

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1 **I. BACKGROUND**

2 A. The United States of America (“United States”), on behalf of the
3 Administrator of the United States Environmental Protection Agency (“EPA”), and
4 the State of California Department of Toxic Substances Control (“DTSC”)
5 (collectively “Plaintiffs”) filed a complaint in this matter pursuant to Sections 106
6 and 107 of the Comprehensive Environmental Response, Compensation, and
7 Liability Act (“CERCLA”), 42 U.S.C. §§ 9606, 9607 (“Complaint”).

8 B. The Plaintiffs’ Complaint seeks, inter alia: (1) reimbursement of costs
9 incurred by EPA and the Department of Justice (“DOJ”) and by DTSC for
10 response actions at the Cooper Drum Company Superfund Site (“Site”) in South
11 Gate, Los Angeles County, California, together with accrued interest; and (2)
12 performance of response actions by defendants at the Site consistent with the
13 National Contingency Plan, 40 C.F.R. Part 300 (“NCP”).

14 C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42
15 U.S.C. § 9621(f)(1)(F), EPA notified the DTSC in July 2010 of negotiations with
16 potentially responsible parties regarding the implementation of the remedial design
17 and remedial action for the Site, and EPA has provided DTSC with an opportunity
18 to participate in such negotiations and to be a party to the Complaint and to this
19 Consent Decree.

20 D. DTSC thereafter joined the United States’ Complaint alleging that the
21 defendants are liable to the State of California Department of Toxic Substances
22 Control under Section 107 of CERCLA, 42 U.S.C. §9607, and Health and Safety
23 Code Sections 25358.3 and 25360.

24 E. The defendants who have entered into this Consent Decree (“Settling
25 Defendants”) do not admit any liability to Plaintiffs arising out of the transactions
26 or occurrences alleged in the Complaint, nor do they acknowledge that the release
27 or threatened release of hazardous substances at or from the Site constitutes an
28

1 imminent and substantial endangerment to public health or welfare or the
2 environment.

3 F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site
4 on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by
5 publication in the Federal Register in June 2001, 49 Fed. Reg. 40,320.

6 G. In response to a release or substantial threat of a release of hazardous
7 substances at or from the Site, EPA undertook a Remedial Investigation and
8 Feasibility Study (“RI/FS”) for the Site from 1996 to 2001 pursuant to 40 C.F.R. §
9 300.430.

10 H. EPA completed a Remedial Investigation and Feasibility Study Report on
11 May 15, 2002.

12 I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published
13 notice of the completion of the RI/FS and of the proposed plan for remedial action
14 in June 2002, in a major local newspaper of general circulation. EPA provided an
15 opportunity for written and oral comments from the public on the proposed plan
16 for remedial action. A copy of the transcript of the public meeting is available to
17 the public as part of the administrative record upon which the Regional
18 Administrator, EPA Region IX, based the selection of the response action.

19 J. The decision by EPA on the remedial action to be implemented at the Site is
20 embodied in a final Record of Decision (“ROD”), executed on September 27,
21 2002, on which DTSC had a reasonable opportunity to review and comment. Both
22 the Remedial Investigation Feasibility Study (URS, May 2002) and the ROD
23 acknowledge that groundwater at the Site has been impacted by upgradient off-site
24 releases of chemicals of concern (“COCs”) that are unrelated to the Site or
25 historical Site activities. Additionally, EPA added two adjacent sites to the
26 National Priorities List. The ROD includes a responsiveness summary to the
27 public comments. Notice of the final plan was published in accordance with
28

1 Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). The ROD is attached as
2 Appendix A.

3 K. On September 21, 2007, EPA completed two Remedial Design Reports
4 containing the Remedial Designs for the Remedial Action for soils and
5 groundwater at the Site.

6 L. On February 11, 2009, EPA issued Unilateral Administrative Order 2009-07
7 (the "Order") to 43 recipients requiring the recipients to conduct the Remedial
8 Action at the Site pursuant to the ROD and the Remedial Designs. In compliance
9 with the Order, certain of the recipients formed the Cooper Drum Cooperating
10 Parties Group (the "Group") and, since 2009, the Group has been performing work
11 pursuant to the Order.

12 M. Based on the information presently available to EPA, EPA believes that the
13 Work will be properly and promptly conducted by Performing Settling Defendants
14 if conducted in accordance with the requirements of this Consent Decree and its
15 appendices.

16 N. Solely for purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the
17 remedy set forth in the ROD and the Work to be performed by Performing Settling
18 Defendants shall constitute a response action taken or ordered by the President for
19 which judicial review shall be limited to the administrative record.

20 O. The United States has reviewed the financial information submitted by the
21 Ability-to-Pay Settling Defendants to determine whether the Ability-to-Pay
22 Settling Defendants are financially able to pay response costs incurred and to be
23 incurred at the Site. Based upon this financial information, the United States has
24 determined that the Ability-to-Pay Settling Defendants are able to pay the amounts
25 required under this Consent Decree.

26 P. The United States has reviewed available evidence relating to the volumes
27 and toxicity of wastes at the Site attributable to the known potentially responsible
28

1 parties and has determined that the De Minimis Settling Defendants meet the
2 criteria of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

3 Q. The Parties recognize, and this Court by entering this Consent Decree finds,
4 that this Consent Decree has been negotiated by the Parties in good faith and
5 implementation of this Consent Decree will expedite the cleanup of the Site and
6 will avoid prolonged and complicated litigation among the Parties, and that this
7 Consent Decree is fair, reasonable, and in the public interest.

8 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

9 **II. JURISDICTION**

10 1. This Court has jurisdiction over the subject matter of this action
11 pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and
12 also has personal jurisdiction over Settling Defendants. Solely for the purposes of
13 this Consent Decree and the underlying Complaint, Settling Defendants waive all
14 objections and defenses that they may have to jurisdiction of the Court or to venue
15 in this District. Settling Defendants shall not challenge the terms of this Consent
16 Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

17 **III. PARTIES BOUND**

18 2. This Consent Decree applies to and is binding upon the United States
19 and DTSC and upon Settling Defendants and their heirs, successors and assigns.
20 Any change in ownership or corporate status of a Settling Defendant, including,
21 but not limited to, any transfer of assets or real or personal property, shall in no
22 way alter such Settling Defendant's responsibilities under this Consent Decree.

23 3. Performing Settling Defendants shall provide a copy of this Consent
24 Decree to each contractor hired to perform the Work required by this Consent
25 Decree and to each person representing Performing Settling Defendants with
26 respect to the Site or the Work, and shall condition all contracts entered into
27 hereunder upon performance of the Work in conformity with the terms of this
28 Consent Decree. Performing Settling Defendants or their contractors shall provide

1 written notice of the Consent Decree to all subcontractors hired to perform any
 2 portion of the Work required by this Consent Decree. Performing Settling
 3 Defendants shall nonetheless be responsible for ensuring that their contractors and
 4 subcontractors perform the Work in accordance with the terms of this Consent
 5 Decree. With regard to the activities undertaken pursuant to this Consent Decree,
 6 each contractor and subcontractor shall be deemed to be in a contractual
 7 relationship with Performing Settling Defendants within the meaning of Section
 8 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

9 **IV. DEFINITIONS**

10 4. Unless otherwise expressly provided herein, terms used in this
 11 Consent Decree that are defined in CERCLA or in regulations promulgated under
 12 CERCLA shall have the meaning assigned to them in CERCLA or in such
 13 regulations. Whenever terms listed below are used in this Consent Decree or its
 14 appendices, the following definitions shall apply solely for purposes of this
 15 Consent Decree:

16 a. “Ability-to-Pay Settling Defendants” shall mean those Settling
 17 Defendants identified in Appendix F as Ability-to-Pay Settling Defendants.

18 b. “CERCLA” shall mean the Comprehensive Environmental
 19 Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

20 c. “Consent Decree” shall mean this Consent Decree and all
 21 appendices attached hereto (listed in Section XXVIII). In the event of
 22 conflict between this Consent Decree and any appendix, this Consent Decree
 23 shall control.

24 d. “Consent Decree ROD Amendment” shall mean an
 25 amendment to the ROD pursuant to Paragraph 11(c)(i)(A)(1) or (2) that
 26 changes the OU1 Phase 2 remedial action either to Monitored Natural
 27 Attenuation or to the alternative Remedial Action recommended by
 28

1 Performing Settling Defendants after conclusion of the Focused Feasibility
2 Study and selected by EPA.

3 e. “Contributing Settling Defendants” shall mean those Settling
4 Defendants identified in Appendix H as Contributing Settling Defendants.

5 f. “Day” shall mean a calendar day unless expressly stated to be a
6 working day. The term “working day” shall mean a day other than a
7 Saturday, Sunday, or federal or state holiday. In computing any period of
8 time under this Consent Decree, where the last day would fall on a Saturday,
9 Sunday, or federal or state holiday, the period shall run until the close of
10 business of the next working day.

11 g. “De Minimis Settling Defendants” shall mean those Settling
12 Defendants identified in Appendix G as De Minimis Settling Defendants.

13 h. “DOJ” shall mean the United States Department of Justice and
14 its successor departments, agencies or instrumentalities.

15 i. “DTSC” shall mean the State of California Department of
16 Toxic Substances Control, its officers, employees and representatives, all of
17 its divisions and branches, and any predecessor or successor agency in
18 interest, including the California Toxic Substances Control Account to the
19 extent that funds from that account, or predecessors to that account, have
20 been, or will be, expended on behalf of DTSC. The Toxic Substances
21 Control Account is successor in interest to the following accounts: The
22 California Hazardous Substances Account; The California Hazardous Waste
23 Control Account; and The California Site Remediation Account.

24 j. “Effective Date” shall mean the date upon which this Consent
25 Decree is entered by the Court as recorded on the Court docket, or, if the
26 Court instead issues an order approving the Consent Decree, the date such
27 order is recorded on the Court docket.
28

1 k. "EPA" shall mean the United States Environmental Protection
2 Agency and its successor departments, agencies or instrumentalities.

3 l. "EPA Hazardous Substance Superfund" shall mean the
4 Hazardous Substance Superfund established by the Internal Revenue Code,
5 26 U.S.C. § 9507.

6 m. "EPA Remedial Design" shall mean those activities previously
7 undertaken by EPA and completed on September 21, 2007, to develop the
8 design, plans and specifications for the Remedial Action for the Site.

9 n. "EPA Remedial Design Reports" shall mean the reports
10 containing the Remedial Designs for soils and groundwater at the Site
11 completed by EPA in September 2007 and attached hereto as Appendix D.

12 o. "Future Response Costs" shall mean all costs incurred after the
13 Effective Date, including, but not limited to, direct and indirect costs that the
14 Plaintiffs incur in reviewing or developing plans, reports, and other
15 deliverables submitted pursuant to this Consent Decree, in overseeing
16 implementation of the Work, or otherwise implementing, overseeing, or
17 enforcing this Consent Decree, including, but not limited to, payroll costs,
18 contractor costs, travel costs, and laboratory costs. Future Response Costs
19 include the costs incurred pursuant to Section VII (Remedy Review), and
20 Section IX (Access and Institutional Controls), including, but not limited to,
21 the cost of attorney time and any monies paid to secure access and/or to
22 secure, implement, monitor, maintain, or enforce Institutional Controls
23 (including, but not limited to, the amount of just compensation), Section XV
24 (Emergency Response), Paragraph 47 (Funding for Work Takeover), and
25 Section XXIX (Community Involvement).

26 p. "Gaspur" or "Gaspur aquifer" shall mean the aquifer
27 immediately beneath the Bellflower aquiclude and extending vertically to a
28 depth of approximately 115 ft bgs.

1 q. “Group” shall mean the Cooper Drum Cooperating Parties
2 Group.

3 r. “Institutional Controls” or “ICs” shall mean proprietary
4 controls and state or local laws, regulations, ordinances, zoning restrictions,
5 or other governmental controls or notices that: (a) limit land, water, and/or
6 resource use to minimize the potential for human exposure to Waste
7 Material at or in connection with the Site; (b) limit land, water and/or
8 resource use to ensure non-interference with or ensure the protectiveness of
9 the Remedial Action; and/or (c) provide information intended to modify or
10 guide human behavior at or in connection with the Site.

11 s. “Interest” for EPA shall mean interest at the rate specified for
12 interest on investments of the EPA Hazardous Substance Superfund
13 established by 26 U.S.C. § 9507, compounded annually on October 1 of
14 each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of
15 interest shall be the rate in effect at the time the interest accrues. The rate of
16 interest is subject to change on October 1 of each year. Interest for DTSC
17 shall mean the interest at the rate specified in California Health and Safety
18 Code § 25360.1.

19 t. “Interim Response Costs” shall mean all costs as defined in
20 Paragraph 4.o. (“Future Response Costs”), above, incurred by the United
21 States between April 1, 2011, and the Effective Date or incurred by DTSC
22 between December 21, 2012, and the Effective Date.

23 u. “National Contingency Plan” or “NCP” shall mean the National
24 Oil and Hazardous Substances Pollution Contingency Plan promulgated
25 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40
26 C.F.R. Part 300, and any amendments thereto.

27 v. “Operation and Maintenance” or “O&M” shall mean all
28 activities required to maintain the effectiveness of the Remedial Action as

1 required under the Operation and Maintenance Plan approved by EPA
2 pursuant to Section VI (Performance of the Work by Performing Settling
3 Defendants) and the Statement of Work (“SOW”).

4 w. “Order” shall mean the Unilateral Administrative Order 2009-
5 07 issued by EPA on February 11, 2009.

6 x. “Paragraph” shall mean a portion of this Consent Decree
7 identified by an Arabic numeral or an upper or lower case letter.

8 y. “Parties” shall mean the United States, DTSC and Settling
9 Defendants.

10 z. “Past Response Costs” shall mean all costs, including, but not
11 limited to, direct and indirect costs, that the United States incurred at or in
12 connection with the Site through March 31, 2011, and that DTSC incurred at
13 or in connection with the Site through December 20, 2012, plus Interest on
14 such costs that accrued pursuant to 42 U.S.C. § 9607(a) through such date.

15 aa. “Performance Standards” shall mean the cleanup standards and
16 other measures of achievement of the goals of the Remedial Action set forth
17 in the ROD, Consent Decree ROD Amendment(s), and the SOW and any
18 modified standards established pursuant to this Consent Decree.

19 bb. “Performing Settling Defendants” or “PSDs” are those Settling
20 Defendants identified in Appendix I as Performing Settling Defendants.

21 cc. “Plaintiffs” shall mean the United States and DTSC.

22 dd. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C.
23 §§ 6901-6992 (also known as the Resource Conservation and Recovery
24 Act).

25 ee. “Record of Decision” or “ROD” shall mean the EPA Record of
26 Decision relating to the Site signed on September 27, 2002, by the Regional
27 Administrator, EPA Region IX, or his delegate, and all attachments thereto.
28 The ROD is attached as Appendix A.

1 ff. "ROD Amendment" shall mean an amendment to the ROD that
2 fundamentally alters the basic features of a selected remedy in the ROD and
3 is adopted pursuant to the provisions of 40 C.F.R § 300.435(c)(2)(ii)(A-H).
4 The term "ROD Amendment" shall include the amended Statement of Work
5 which implements the ROD Amendment.

6 gg. "Remedial Action" shall mean all activities Performing Settling
7 Defendants are required to perform under the Consent Decree to implement
8 the ROD, in accordance with the SOW, the final approved remedial design
9 submission, the approved Remedial Action Work Plan(s), and other plans
10 approved by EPA, including implementation of Institutional Controls, to
11 achieve the Performance Standards, and excluding the performance of the
12 Remedial Designs, O&M, and the activities required under Section XXV
13 (Retention of Records).

14 hh. "Remedial Action Work Plan(s)" shall mean the document(s)
15 developed pursuant to Paragraph 11 (Remedial Action) and the SOW and
16 approved by EPA, and any modifications thereto.

17 ii. "Section" shall mean a portion of this Consent Decree
18 identified by a Roman numeral.

19 jj. "Settling Defendants" shall mean the parties identified in
20 Appendix E.

21 kk. "Site" shall mean the Cooper Drum Company Superfund Site,
22 Los Angeles County, California, depicted generally on the map attached as
23 Appendix B and the areal extent of hazardous substances released at or from
24 the Site. The Site does not include the aquifers underlying the Gaspar
25 aquifer.

26 ll. "Statement of Work or "SOW" shall mean the statement of
27 work for implementation of the Supplemental Remedial Design, Remedial
28

1 Action and O&M at the Site, as set forth in Appendix C to this Consent
2 Decree and any modifications made in accordance with this Consent Decree.

3 mm. “Supervising Contractor” shall mean the principal contractor
4 retained by Performing Settling Defendants to supervise and direct the
5 implementation of the Work under this Consent Decree.

6 nn. “Supplemental Remedial Design” shall mean such
7 modifications, additions or changes to the EPA Remedial Designs to be
8 incorporated into the Remedial Action Work Plans developed pursuant to
9 Paragraph 11 (Remedial Action), as described in the SOW, to be undertaken
10 and completed by Performing Settling Defendants.

11 oo. “United States” shall mean the United States of America and
12 each department, agency and instrumentality of the United States, including
13 EPA.

14 pp. “Waste Material” shall mean (1) any “hazardous substance”
15 under Section 101(14) of CERCLA, 42 U.S.C. §9601(14); and (2) any
16 pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. §
17 9601(33).

18 qq. “Work” shall mean all activities and obligations Performing
19 Settling Defendants are required to perform under this Consent Decree,
20 except the activities required under Section XXV (Retention of Records).

21 **V. GENERAL PROVISIONS**

22 5. Objectives of the Parties. The objectives of the Parties in entering
23 into this Consent Decree are to protect public health and welfare and the
24 environment by the design and implementation of response actions at the Site by
25 Performing Settling Defendants, to pay response costs of Plaintiffs, and to resolve
26 the claims of Plaintiffs stated in the Complaint against Settling Defendants.

27 // //

28 // //

1 6. Commitments by Settling Defendants.

2 a. Performing Settling Defendants shall finance and perform the
3 Work in accordance with this Consent Decree, the ROD, the SOW, and all
4 work plans and other plans, standards, specifications, and schedules set forth
5 in this Consent Decree or developed by Performing Settling Defendants and
6 approved by EPA, after reasonable opportunity for review and comment by
7 DTSC, pursuant to this Consent Decree. Performing Settling Defendants
8 shall pay the United States and DTSC Past Response Costs, Interim
9 Response Costs and Future Response Costs as provided in this Consent
10 Decree.

11 b. The obligations of Performing Settling Defendants to finance
12 and perform the Work, including obligations to pay amounts due under this
13 Consent Decree, are joint and several. In the event of the insolvency of any
14 Performing Settling Defendant or the failure of any Performing Settling
15 Defendant to implement any requirement of this Consent Decree, the
16 remaining Performing Settling Defendants shall complete all such
17 requirements.

18 c. Performing Settling Defendants' obligations under this Consent
19 Decree shall be independent of and unaffected by any nonperformance by
20 Contributing Settling Defendants, Ability-to-Pay Settling Defendants or De
21 Minimis Settling Defendants and shall remain in full force and effect
22 regardless of whether Contributing Settling Defendants, Ability-to-Pay
23 Settling Defendants or De Minimis Settling Defendants have complied with
24 their obligations under this Consent Decree.

25 d. Contributing Settling Defendants shall make payments to
26 Performing Settling Defendants in the amounts and at the times set out in
27 Appendix H. Evidence of payment of these required amounts by
28 Contributing Settling Defendants shall be provided to EPA either by the

1 Performing Settling Defendants that have received such payment or by any
2 escrow agent charged by any Contributing Settling Defendants to transfer
3 such payments to Performing Settling Defendants.

4 e. Ability-to-Pay Settling Defendants shall make payments to the
5 United States in the amounts and at the times set out in Appendix F.

6 f. Each De Minimis Settling Defendant shall make its payment to
7 the United States in the amount and at the time set out for it in Appendix G.

8 7. Compliance With Applicable Law. All activities undertaken by
9 Performing Settling Defendants pursuant to this Consent Decree shall be
10 performed in accordance with the requirements of all applicable federal and state
11 laws and regulations. Performing Settling Defendants must also comply with all
12 applicable or relevant and appropriate requirements of all federal and state
13 environmental laws as set forth in the ROD and the SOW. The activities
14 conducted pursuant to this Consent Decree, if approved by EPA or otherwise
15 approved under the Decree provisions, shall be deemed to be consistent with the
16 NCP.

17 8. Permits.

18 a. As provided in Section 121(e) of CERCLA, 42 U.S.C. §
19 9621(e), and Section 300.400(e) of the NCP, 40 C.F.R. § 300.400(e), no
20 permit shall be required for any portion of the Work conducted entirely on-
21 Site (i.e., within the areal extent of contamination or in very close proximity
22 to the contamination and necessary for implementation of the Work). Where
23 any portion of the Work that is not on-Site requires a federal or state permit
24 or approval, Performing Settling Defendants shall submit timely and
25 complete applications and take all other actions necessary to obtain all such
26 permits or approvals.

27 b. Performing Settling Defendants may seek relief under the
28 provisions of Section XVIII (Force Majeure) for any delay in the

1 performance of the Work resulting from the failure to obtain, or a delay in
 2 obtaining, any permit or approval, including any required municipal
 3 approval, referenced in Paragraph 8.a and necessary for the implementation
 4 of the Work, provided that they have submitted timely and complete
 5 applications and taken all other actions necessary to obtain all such permits
 6 or approvals.

7 c. This Consent Decree is not, and shall not be construed to be, a
 8 permit issued pursuant to any federal or state statute or regulation.

9 **VI. PERFORMANCE OF THE WORK BY PERFORMING SETTling**
 10 **DEFENDANTS**

11 9. Selection of Supervising Contractor.

12 a. All aspects of the Work to be performed by Performing Settling
 13 Defendants pursuant to Sections VI (Performance of the Work by
 14 Performing Settling Defendants), VII (Remedy Review), VIII (Quality
 15 Assurance, Sampling and Data Analysis), and XV (Emergency Response) of
 16 this Consent Decree shall be under the direction and supervision of the
 17 Supervising Contractor. EPA has issued an authorization to proceed
 18 regarding the hiring of Haley & Aldrich as Supervising Contractor. If at any
 19 time hereafter, Performing Settling Defendants propose to change this
 20 Supervising Contractor, Performing Settling Defendants shall give such
 21 notice to EPA, and must obtain an authorization to proceed from EPA, after
 22 reasonable opportunity for review and comment by DTSC, before the new
 23 Supervising Contractor performs, directs, or supervises any Work under this
 24 Consent Decree. Performing Settling Defendants shall demonstrate that the
 25 proposed replacement contractor has a quality assurance system that
 26 complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for
 27 Quality Systems for Environmental Data Collection and Environmental
 28 Technology Programs" (American National Standard, January 5, 1995), by

1 submitting a copy of the proposed contractor's Quality Management Plan
2 ("QMP"). The QMP should be prepared in accordance with "EPA
3 Requirements for Quality Management Plans (QA/R-2)" (EPS/240/B-
4 01/002, March, 2001, reissued May 2006) or equivalent documentation as
5 determined by EPA.

6 b. If EPA disapproves a proposed replacement Supervising
7 Contractor, EPA will notify the Performing Settling Defendants in writing.
8 Performing Settling Defendants shall submit to EPA and DTSC a list of
9 contractors, including the qualifications of each contractor, that would be
10 acceptable to them within 30 days of receipt of EPA's disapproval of the
11 replacement contractor previously proposed. EPA will provide written
12 notice of the names of any contractor(s) that it disapproves and an
13 authorization to proceed with respect to any of the other contractors.
14 Performing Settling Defendants may select any contractor from that list that
15 is not disapproved and shall notify EPA and DTSC of the name of the
16 replacement contractor selected within 21 days of EPA's authorization to
17 proceed. If EPA fails to provide written notice of its authorization to
18 proceed or disapproval as provided in this Paragraph and this failure
19 prevents Performing Settling Defendants from meeting one or more
20 deadlines in a plan approved by EPA pursuant to this Consent Decree,
21 Performing Settling Defendants may seek relief under Section XVIII (Force
22 Majeure).

23 10. Remedial Design.

24 a. As noted in Section I(K) of this Consent Decree, EPA
25 completed the EPA Remedial Design Reports in September 2007.
26 Performing Settling Defendants shall submit to EPA and DTSC, as part of
27 the Remedial Action Work Plan(s) described in Paragraph 11, one or more
28 Supplemental Remedial Designs for the design of the remedy set forth in the

1 ROD or in a Consent Decree ROD Amendment in accordance with the SOW
2 or an amended SOW and for achievement of the Performance Standards and
3 other requirements set forth in the ROD, this Consent Decree, and the SOW
4 or an amended SOW. Upon approval of the Remedial Action Work Plan(s)
5 by EPA, after reasonable opportunity for review and comment by DTSC, the
6 Supplemental Remedial Design(s) shall be incorporated into and enforceable
7 under this Consent Decree.

8 11. Remedial Action.

9 a. As set out in the SOW, the Group has performed work pursuant
10 to the Order since 2009 and in the course of its compliance with the Order
11 has completed and submitted deliverables approved by EPA in furtherance
12 of the Remedial Action. Those previously submitted and approved
13 deliverables are listed and described in the SOW.

14 b. The Remedial Action is being conducted in three phases. EPA
15 has approved work plans submitted by the Performing Settling Defendants
16 for Phase 1 Soil and Phase 1 Groundwater and Addenda that described the
17 remedial work to be performed for the soil (Operable Unit 2, or "OU2") and
18 groundwater (Operable Unit 1 or "OU1"). Phases 2 and 3 will entail
19 preparation of a single work plan for each phase. The Phase 2 Remedial
20 Action Work Plan shall include details for an OU1 downgradient
21 containment and treatment system or the alternative Remedial Action
22 selected by EPA in a Consent Decree ROD Amendment after evaluation of
23 monitored natural attenuation ("MNA") and, if appropriate, the Focused
24 Feasibility Study as set out in the SOW. The Phase 3 Remedial Action Work
25 Plan shall include details for OU2 soil excavation and disposal. The
26 Remedial Action Work Plans for Phase 2 and Phase 3 must be reviewed and
27 approved by EPA, after reasonable opportunity for review and comment by
28 DTSC.

1
2 c. Each Work Plan shall include:

3 i. Project Description

4 A. The Phase 2 Remedial Action Work Plan (RAWP)
5 shall include details associated with the OU1 downgradient
6 containment and treatment system, the Remedial Action
7 selected in the ROD; unless EPA selects an alternative
8 Remedial Action in a Consent Decree ROD Amendment after
9 the Parties complete the following process:

10 1. The PSDs shall implement the *MNA Assessment*
11 *Work Plan* previously approved by EPA and submit the MNA
12 sampling data and assessment to EPA in a Technical Memo
13 within 60 days after completion of the two-year sampling
14 program. If EPA thereafter selects MNA as the Remedial
15 Action in a Consent Decree ROD Amendment, the Parties
16 shall modify the Consent Decree pursuant to the provisions of
17 Paragraph 113. If the Court approves the modification, the
18 PSDs shall implement MNA and the Phase 2 RAWP shall
19 include details associated with the implementation of MNA.

20 2. If EPA does not select MNA as the Phase 2 OU1
21 Remedial Action, the PSDs, within twelve months of receiving
22 such notice from EPA, shall submit an FFS to EPA to re-
23 evaluate the feasibility and effectiveness of groundwater
24 extraction and treatment against alternative remedial
25 technologies. The FFS shall include the PSDs' recommended
26 alternative Remedial Action as an alternative to groundwater
27 extraction and treatment. If, after review of the FFS, EPA
28 selects the PSDs' recommended alternative Remedial Action in

1 a Consent Decree ROD Amendment, the Parties shall modify
2 the Consent Decree pursuant to the provisions of Paragraph
3 113. If the Court approves the modification, the PSDs shall
4 implement such alternative Remedial Action and the Phase 2
5 RAWP shall include the details associated with implementation
6 of such alternative Remedial Action.

7 3. a) If EPA selects an alternative Remedial Action for
8 OU1 Phase 2 pursuant to (1) or (2), above, in this subparagraph,
9 the Phase 2 RAWP will be submitted pursuant to the schedule
10 in the amended SOW after Court approval of the modification
11 of this Consent Decree incorporating the Consent Decree ROD
12 Amendment.

13 b) If EPA does not select an alternative Remedial
14 Action for OU1 Phase 2 pursuant to (1) or (2) above, then the
15 PSDs shall submit the Phase 2 RAWP for implementation of
16 groundwater extraction and treatment, the Remedial Action
17 selected in the ROD, pursuant to the schedule in the SOW.

18 The provisions of this Paragraph 11(c)(i) do not alter or
19 affect in any way the authority of EPA to take any of the
20 actions set out in paragraphs 86 and 87 (Pre-certification and
21 Post-certification Reservations), including, without limitation,
22 the authority to promulgate ROD Amendments. The provisions
23 of this Paragraph 11(c)(i) do not alter or affect in any way the
24 authority of EPA to select further response actions or the
25 obligation of the PSDs to perform further response actions as
26 set out in Paragraphs 17-20 of this Consent Decree.

27 B. The Phase 3 Soil Excavation and Disposal Work
28 Plan shall include details for implementation of excavation and

1 disposal of non-VOCs in soil, and shall address implementation
2 of Institutional Controls where soil excavation is not
3 practicable. On the basis of pre-excavation soil sampling and
4 considerations of accessibility, community impact, and air
5 quality impact, EPA will determine the extent of excavation
6 and the need, if any, for Institutional Controls.

7 The results of the pre-excavation characterization, the
8 final excavation limits, and a strategy for implementation of
9 EPA-selected Institutional Controls shall be presented in the
10 Phase 3 OU2 RAWP.

11 ii. Description of the Responsibility and Authority of All
12 Organizations and Key Personnel Involved With the Remedial
13 Action

14 Each Work Plan shall define lines of authority and
15 provide brief descriptions of duties.

16 iii. Schedule

17 Each Remedial Action Work Plan shall identify the
18 initiation and completion dates for each required construction
19 activity, inspection, and deliverable required by the SOW
20 schedule. The schedule shall include coordination meetings
21 and other activities as set out in Section IV(B)(3) of the SOW.
22 Coordination meetings may take place telephonically.

23 iv. Contracting Strategy and Construction Process

24 Each Remedial Action Work Plan shall briefly describe
25 the planned contracting strategy, including a description of the
26 EPA evaluation and approval process for significant
27 construction changes.
28

v. Plans for Satisfying All Permitting Requirements and Acquiring Property, Leases, Easements, or Other Access

Each Remedial Action Work Plan shall list: all permits, property, leases, and easements required for implementation of the Remedial Action; permits, property, access rights, leases and easements acquired to date; and a schedule for submittal of permit applications and acquisition of property, leases or easements not yet obtained.

Where normally required, permits must be obtained for all off-Site activities. The Performing Settling Defendants are not required to obtain permits for on-Site remedial activities, but must comply with all substantive requirements, including building codes. If a permit will not be obtained for an on-Site activity where a permit is usually required, the Work Plan shall describe all consultative or coordination activities planned to identify and satisfy the substantive requirements.

vi. Third Parties Necessary for Construction, or Operation and Maintenance of the Remedial Action

Each Remedial Action Work Plan shall describe the roles and responsibilities of Performing Settling Defendants, the County of Los Angeles, the City of South Gate, participating water and wastewater agencies, and other parties expected to play a significant role in the construction or operation of the Remedial Action, and shall provide the related information required by the SOW.

vii. Identification of Any Concerns About the Quantity, Quality, Completeness, or Usability of Water Quality or Other Data Upon Which the Design was Based

Each Remedial Action Work Plan shall provide a description of additional data collection efforts, if any, required for completion of the Remedial Design for the Remedial Action, and shall consider whether any data are needed to verify that critical design assumptions remain valid. If additional data are required, the Remedial Action Work Plan shall propose a schedule for preparation and implementation of a Sampling and Analysis Plan or Addendum.

viii. Description of Planned Community Relations Activities to be Conducted During the Remedial Action

Each Remedial Action Work Plan shall affirm that the Performing Settling Defendants shall cooperate with EPA and DTSC in providing community relations support work. This support shall be at the request of EPA and may include:

A. Logistical support for public informational or technical meetings, including: the provision/copying of presentations, signage, exhibits, visual aids and equipment; renting and setting up meeting locations; and English translation support at public meetings;

B. Publication and copying of fact sheets or updates, and document translation;

C. Assistance in placing EPA-generated public notices in print; and

D. Logistical support for EPA-conducted community interviews.

ix. Updates to the Remedial Action Work Plans and Periodic Reporting to the EPA

Each Remedial Action Work Plan shall describe provisions for reporting progress to EPA consistent with the schedule included in the SOW and the OU1 Monitoring Plan for Groundwater and OU2 Monitoring Plan for Soil.

d. Upon approval of any Remedial Action Work Plan by EPA, Performing Settling Defendants shall implement the activities required under the Remedial Action Work Plan. Performing Settling Defendants shall submit to EPA and DTSC all reports and other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule in the SOW for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Performing Settling Defendants shall not commence physical Remedial Action activities at the Site pursuant to any Remedial Action Work Plan prior to receipt of EPA approval of that Remedial Action Work Plan.

12. Performing Settling Defendants shall continue to implement the Remedial Action until the Performance Standards are achieved. Performing Settling Defendants shall implement O&M for so long thereafter as is required under this Consent Decree.

13. Modification of the SOW or Related Work Plans.

a. If EPA, after reasonable opportunity for review and comment by DTSC, determines that it is necessary to modify the work specified in the SOW and/or in work plans developed pursuant to the SOW to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, and such modification is consistent with the scope of the remedy set forth in the ROD, then EPA may issue such modification in writing and shall notify Performing Settling Defendants of such modification. For purposes of this Paragraph and

1 Paragraph 49 (Completion of the Remedial Action) only, the “scope of the
2 remedy set forth in the ROD” is:

3 i. Restoration of groundwater to drinking water standards
4 for certain volatile organic compound(s) (“VOC”) through treatment.
5 The remedy set forth in the ROD includes extraction and treatment
6 using liquid phase activated carbon vessels, with containment to be
7 provided at the downgradient extent of contamination. The remedy set
8 forth in the ROD includes chemical in-situ treatment to enhance the
9 treatment of COCs in groundwater.

10 ii. Remediation of soil COCs to prevent VOCs from
11 migrating into groundwater at levels which would exceed drinking
12 water standards. The remedy for soils set forth in the ROD includes
13 dual phase extraction for treatment of VOCs.

14 iii. Remediation, where feasible, of non-VOC contaminated
15 soil to health-action levels protective of ongoing and potential future
16 Site uses. The remedy for non-VOC contaminated soils set forth in the
17 ROD includes excavation for disposal, if practicable and Institutional
18 Controls for protectiveness where excavation is not practicable.

19 iv. Remediation of soil and groundwater VOCs to health-
20 based action levels to eliminate potential exposures to contaminated
21 indoor air.

22 If Performing Settling Defendants object to the modification they may,
23 within 30 days after EPA’s notification, invoke dispute resolution under
24 Paragraph 69 (Record Review).

25 b. The remediation of all aquifers at the Site underlying the
26 Gaspur Aquifer, including the Exposition Aquifer, is not within the scope of
27 the remedy set forth in the ROD. Such remediation, or any response actions
28 with respect to aquifers underlying the Gaspur Aquifer, other than the

1 monitoring of the Exposition Aquifer described in the SOW, will require a
2 separate administrative or judicial enforcement action seeking to enforce
3 implementation of a remedy set forth in a decision document other than the
4 ROD.

5 c. The SOW and/or related work plans shall be modified: (1) in
6 accordance with the modification issued by EPA; or (2) if Performing
7 Settling Defendants invoke dispute resolution, in accordance with the final
8 resolution of the dispute. The modification shall be incorporated into and
9 enforceable under this Consent Decree, and Performing Settling Defendants
10 shall implement all work required by such modification. Performing
11 Settling Defendants shall incorporate the modification into the Remedial
12 Design or Remedial Action Work Plan under Paragraph 10 (Remedial
13 Design) or Paragraph 11 (Remedial Action), as appropriate.

14 d. Nothing in this Paragraph shall be construed to limit EPA's
15 authority to require performance of further response actions as otherwise
16 provided in this Consent Decree. Nothing in this Paragraph shall be
17 construed to limit DTSC's authority to require performance of further
18 response actions except as provided in this Consent Decree.

19 14. Nothing in this Consent Decree, the SOW, or the Remedial Design or
20 Remedial Action Work Plans constitutes a warranty or representation of any kind
21 by Plaintiffs that compliance with the work requirements set forth in the SOW and
22 the Work Plans will achieve the Performance Standards.

23 15. Off-Site Shipment of Waste Material

24 a. Performing Settling Defendants may ship Waste Material from
25 the Site to an off-Site facility only if they verify, prior to any shipment, that
26 the off-Site facility is operating in compliance with the requirements of
27 Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. §
28 300.440, by obtaining a determination from EPA that the proposed receiving

1 facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40
2 C.F.R. § 300.440.

3 b. Performing Settling Defendants may ship Waste Material from
4 the Site to an out-of-state waste management facility only if, prior to any
5 shipment, they provide written notice to the appropriate state environmental
6 official in the receiving facility's state and to the EPA Project Coordinator.
7 This notice requirement shall not apply to any off-Site shipments when the
8 total volume of all such shipments will not exceed 10 cubic yards. The
9 written notice shall include the following information, if available: (1) the
10 name and location of the facility to which the Waste Material is to be
11 shipped; (2) the type and quantity of the Waste Material to be shipped; (3)
12 the schedule for the shipment; and (4) the method of transportation.

13 Performing Settling Defendants shall also notify the state environmental
14 official referenced above and the EPA Project Coordinator of any major
15 changes in the shipment plan, such as a decision to ship the Waste Material
16 to a different out-of-state facility. Performing Settling Defendants shall
17 provide the written notice after the award of the contract for Remedial
18 Action construction and before the Waste Material is shipped.

19 **VII. REMEDY REVIEW**

20 16. Periodic Review. Performing Settling Defendants shall conduct any
21 studies and investigations that EPA requests in order to permit EPA to conduct
22 reviews of whether the Remedial Action is protective of human health and the
23 environment at least every five years as required by Section 121(c) of CERCLA,
24 42 U.S.C. § 9621(c), and any applicable regulations.

25 17. EPA Selection of Further Response Actions. If EPA determines, after
26 reasonable opportunity for review and comment by DTSC, that the Remedial
27 Action is not protective of human health and the environment, EPA may select
28 further response actions for the Site, including, without limitation, response actions

1 for the Phase 2 OU1 Remedial Action selected by EPA after either the MNA
 2 evaluation or the FFS pursuant to Paragraph 11 of this Consent Decree, in
 3 accordance with the requirements of CERCLA and the NCP, including any State of
 4 California notice and participation requirements contained therein.

5 18. Opportunity To Comment. Performing Settling Defendants and, if
 6 required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C § 9613(k)(2) or
 7 9617, the public, will be provided with an opportunity to comment on any further
 8 response actions proposed by EPA as a result of the review conducted pursuant to
 9 Section 121(c) of CERCLA and to submit written comments for the record during
 10 the comment period.

11 19. Performing Settling Defendants' Obligation To Perform Further
 12 Response Actions. If EPA selects further response actions at the Site, EPA may
 13 require Performing Settling Defendants to perform such further response actions,
 14 but only to the extent that the reopener conditions in Paragraph 86 or Paragraph 87
 15 (United States' Pre-and Post-Certification Reservations) are satisfied. Performing
 16 Settling Defendants may invoke the procedures set forth in Section XIX (Dispute
 17 Resolution) to dispute (a) EPA's determination that the reopener conditions of
 18 Paragraphs 86 or 87 are satisfied, (2) EPA's determination that the Remedial
 19 Action is not protective of human health and the environment, or (3) EPA's
 20 selection of the further response actions. Disputes pertaining to whether the
 21 Remedial Action is protective or to EPA's selection of further response actions
 22 shall be resolved pursuant to Paragraph 69 (Record Review).

23 20. Submissions of Plans. If Performing Settling Defendants are required
 24 to perform further response actions pursuant to Paragraph 19, they shall submit a
 25 plan for such response action to EPA for approval in accordance with the
 26 procedures of Section VI (Performance of Work by Performing Settling
 27 Defendants). Performing Settling Defendants shall implement the approved plan
 28 in accordance with the provisions of this Consent Decree.

1 **VIII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS**

2 21. Quality Assurance.

3 a. Performing Settling Defendants shall use the quality assurance,
4 quality control, and chain of custody procedures for all treatability, design,
5 compliance and monitoring samples in accordance with “EPA Requirements
6 for Quality Assurance Project Plans (QA/R5)” (EPA/240/B-01/003, March
7 2001, reissued May 2006), “Guidance for Quality Assurance Project Plans
8 (QA/G-5)” (EPA/240/R-02/009, December 2002), and subsequent
9 amendments to such guidelines upon Performing Settling Defendants’
10 receipt of notification by EPA of such amendment. Amended guidelines
11 shall apply only to procedures conducted after such notification.

12 b. Prior to the commencement of any monitoring project under
13 this Consent Decree, Performing Settling Defendants shall submit to EPA
14 for approval, after reasonable opportunity for review and comment by
15 DTSC, a Quality Assurance Project Plan (“QAPP”) that is consistent with
16 the SOW, the NCP and Uniform Federal Policy QAPP Manual or the EPA
17 QA/G-5 QAPP guidance, including subsequent revisions thereto. If relevant
18 to the proceeding, Performing Settling Defendants and EPA agree that
19 validated sampling data generated in accordance with the QAPP(s) and
20 reviewed and approved by EPA shall be admissible as evidence, without
21 objection, in any proceeding under this Consent Decree. Performing
22 Settling Defendants shall ensure that EPA and DTSC personnel and their
23 authorized representatives are allowed access at reasonable times to all
24 laboratories utilized by Performing Settling Defendants in implementing this
25 Consent Decree. In addition, Performing Settling Defendants shall ensure
26 that such laboratories shall analyze all samples submitted by EPA pursuant
27 to the QAPP for quality assurance monitoring. Performing Settling
28 Defendants shall ensure that the laboratories they utilize for the analysis of

1 samples taken pursuant to this Consent Decree perform all analyses
2 according to accepted EPA methods. Accepted EPA methods consist of
3 those methods which are documented in the “USEPA Contract Laboratory
4 Statement of Work for Inorganic Analysis, ILM05.4” and the “USEPA
5 Contract Laboratory Program Statement of Work for Organic Analysis,
6 SOM01.2,” and any amendments made thereto during the course of the
7 implementation of this Consent Decree. Notwithstanding the foregoing,
8 upon approval by EPA, after reasonable opportunity for review and
9 comment by DTSC, Performing Settling Defendants may use other
10 analytical methods with equivalent level of QA/QC documentation as
11 defined by the Region IX “Laboratory Documentation Required for Data
12 Evaluation, R9QA/004.2 August 2001” guidance. Performing Settling
13 Defendants shall ensure that all laboratories they use for analysis of samples
14 taken pursuant to this Consent Decree participate in an EPA or EPA-
15 equivalent quality assurance/quality control (“QA/QC”) program.
16 Performing Settling Defendants shall only use laboratories that have a
17 documented Quality System that complies with ANSI/ASQC E4-1994,
18 “Specifications and Guidelines for Quality Systems for Environmental Data
19 Collection and Environmental Technology Programs,” (“American National
20 Standard, January 5, 1995), and “EPA Requirements for Quality
21 Management Plans (QA/R-2),” (EPA/240/B-01/002, March 2001, reissued
22 May 2006) or equivalent documentation as determined by EPA. EPA
23 considers laboratories accredited under the National Environmental
24 Laboratory Accreditation Program (“NELAP”) as meeting the Quality
25 System requirements. Performing Settling Defendants shall ensure that all
26 field methodologies utilized in collecting samples for subsequent analysis
27 pursuant to this Consent Decree are conducted in accordance with the
28 procedures set forth in the QAPP approved by EPA.

22. Upon request, Performing Settling Defendants shall allow split or duplicate samples to be taken by EPA or DTSC or their authorized representatives. Performing Settling Defendants shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA or DTSC shall have the right to take any additional samples that EPA deems necessary. EPA or DTSC shall notify Performing Settling Parties not less than 14 days in advance of its plan to take such additional samples. Upon request, EPA or DTSC shall allow Performing Settling Defendants to take split or duplicate samples of any samples it takes as part of EPA's oversight of Performing Settling Defendants' implementation of the Work.

23. Performing Settling Defendants shall submit to EPA and DTSC two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Performing Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA or DTSC agrees otherwise. Copies may be delivered to EPA or DTSC by electronic means including email.

24. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

25. If the Site, or any other real property where access and/or land/water use restrictions are needed, is owned or controlled by any of the Settling Defendants:

- a. such Settling Defendants shall, commencing on the date of lodging of this Consent Decree, provide the United States, DTSC and the other Settling Defendants, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other

1 real property, to conduct any activity regarding the Consent Decree
2 including, but not limited to, the following activities:

- 3 (1) monitoring the Work;
- 4 (2) verifying any data or information submitted to the United
5 States;
- 6 (3) conducting investigations relating to contamination at
7 the Site;
- 8 (4) obtaining samples;
- 9 (5) assessing the need for, planning, or implementing
10 additional response actions at the Site;
- 11 (6) assessing implementation of quality assurance and
12 quality control practices as defined in the approved Quality Assurance
13 Project Plans;
- 14 (7) implementing the Work pursuant to the conditions set
15 forth in Paragraph 90 (Work Takeover);
- 16 (8) inspecting and copying records, operating logs, contracts,
17 or other documents maintained or generated by Settling Defendants or
18 their agents, consistent with Section XXIV (Access to Information);
- 19 (9) assessing Performing Settling Defendants' compliance
20 with this Consent Decree;
- 21 (10) determining whether the Site or other real property is
22 being used in a manner that is prohibited or restricted, or that may
23 need to be prohibited or restricted under the Consent Decree; and
- 24 (11) implementing, monitoring, maintaining, reporting on, and
25 enforcing any Institutional Controls.

26 b. Commencing on the date of lodging of the Consent Decree,
27 Settling Defendants shall not use the Site, or such other real property, in any
28 manner that EPA, after reasonable opportunity for review and comment by

1 DTSC, determines will pose an unacceptable risk to human health or to the
2 environment due to exposure to Waste Material or interfere with or
3 adversely affect the implementation, integrity, or protectiveness of the
4 Remedial Action or O&M.

5 26. If the Site, or any other property where access and/or land/water use
6 restrictions are needed to implement this Consent Decree, is owned or controlled
7 by persons other than any Settling Defendant, Performing Settling Defendants shall
8 use best efforts to secure from such persons:

9 (a) an agreement to provide access thereto for such Performing
10 Settling Defendants, as well as for the United States on behalf of EPA and
11 DTSC, as well as their representatives (including contractors), for the
12 purpose of conducting any activity specified in this Consent Decree
13 including, but not limited to, those activities listed in Paragraph 25 of this
14 Consent Decree.

15 (b) an agreement, enforceable by Performing Settling Defendants
16 and the United States and DTSC, to refrain from using the Site, or such other
17 real property, in any manner that EPA, after reasonable opportunity for
18 review and comment by DTSC, determines will pose an unacceptable risk to
19 human health or the environment due to exposure to Waste Material or
20 interfere with or adversely affect the implementation, integrity, or
21 protectiveness of the Remedial Action.

22 27. For purposes of Paragraph 26 of this Consent Decree, "best efforts"
23 includes the payment of reasonable sums of money in consideration of access,
24 access easements, land/water use restrictions, restrictive easements, and/or an
25 agreement to release or subordinate a prior lien or encumbrance. If within 30 days
26 of the Effective Date, Performing Settling Defendants have not obtained any
27 access or land/water use restriction agreements required by Paragraphs 25 and 26
28 of this Consent Decree, Performing Settling Defendants shall promptly notify the

1 United States in writing, and shall include in that notification a summary of the
2 steps that the Performing Settling Defendants have taken to attempt to comply with
3 Paragraph 25 or 26 of this Consent Decree. The United States may, as it deems
4 appropriate, assist Performing Settling Defendants in obtaining access or
5 land/water use restrictions, or in obtaining the release or subordination of a prior
6 lien or encumbrance. Performing Settling Defendants will reimburse the United
7 States under Section XVI (Payments for Response Costs), for all costs incurred,
8 direct or indirect, by the United States in obtaining such access, agreements to
9 restrict land/water use, and/or the release/subordination of prior liens or
10 encumbrances including, but not limited to, the cost of attorney time and the
11 amount of monetary consideration or just compensation paid by the United States
12 to any landowner. The foregoing commitments in Paragraphs 26 and 27 do not
13 apply to any property owned by Cooper Living Trust or Cooper Properties, LP or
14 their successors.

15 28. If EPA, after reasonable opportunity for review and comment by
16 DTSC, determines that Institutional Controls in the form of state or local laws,
17 regulations, ordinances, zoning restrictions, or other governmental controls are
18 needed at or in connection with the Site, Performing Settling Defendants will
19 cooperate with EPA's efforts to secure and ensure compliance with such
20 Institutional Controls.

21 29. Notwithstanding any provision of this Consent Decree, the United
22 States and DTSC retain all of their access authorities and rights, as well as all of its
23 rights to require Institutional Controls, including enforcement authorities related
24 thereto, under CERCLA, RCRA and any other applicable statute or regulations.

25 **X. REPORTING REQUIREMENTS**

26 30. In addition to any other requirement of this Consent Decree,
27 Performing Settling Defendants shall submit to EPA and DTSC two copies of
28 written monthly progress reports that: (a) describe the actions which have been

1 taken toward achieving compliance with this Consent Decree during the previous
2 month; (b) include a summary of all results of sampling and tests and all other data
3 received or generated by Performing Settling Defendants or their contractors or
4 agents in the previous month; (c) identify all plans, reports, and other deliverables
5 required by this Consent Decree completed and submitted during the previous
6 month; (d) describe all actions, including, but not limited to, data collection and
7 implementation of work plans, that are scheduled for the next six weeks and
8 provide other information relating to the progress of construction, including, but
9 not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include
10 information regarding percentage of completion, unresolved delays encountered or
11 anticipated that may affect the future schedule for implementation of the Work,
12 and a description of efforts made to mitigate those delays or anticipated delays;
13 (f) include any modifications to the work plans or other schedules that Performing
14 Settling Defendants have proposed to EPA or that have been approved by EPA;
15 and (g) describe all activities undertaken in support of the Community Involvement
16 Plan during the previous month and those to be undertaken in the next six weeks.
17 These reports may be submitted by electronic means including email. Performing
18 Settling Defendants shall submit these progress reports to EPA and DTSC by the
19 tenth day of every month following the lodging of this Consent Decree until EPA
20 notifies Performing Settling Defendants the reports are no longer required pursuant
21 to Section XIV (Certificate of Completion) or until EPA, DTSC, and Performing
22 Settling Defendants agree to a modified schedule. If requested by EPA or DTSC,
23 Performing Settling Defendants shall also provide briefings for EPA and DTSC to
24 discuss the progress of the Work.

25 31. Performing Settling Defendants shall notify EPA and DTSC of any
26 change in the schedule described in the monthly progress report for the
27 performance of any activity, including, but not limited to, data collection and
28

1 implementation of work plans, no later than seven days prior to the performance of
2 the activity or as otherwise agreed by the Parties.

3 32. Upon the occurrence of any event during performance of the Work
4 that Performing Settling Defendants are required to report pursuant to Section 103
5 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and
6 Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004, Performing
7 Settling Defendants shall within 24 hours of the onset of such event orally notify
8 the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the
9 event of the unavailability of the EPA Project Coordinator), or, in the event that
10 neither the EPA Project Coordinator or Alternate EPA Project Coordinator is
11 available, the Emergency Response Section, Region IX, United States
12 Environmental Protection Agency. These reporting requirements are in addition to
13 the reporting required by CERCLA Section 103 or EPCRA Section 304.
14 Immediately following notice to EPA as required by this Paragraph, Performing
15 Settling Defendants shall orally notify the DTSC Project Coordinator.

16 33. Within 20 days of the onset of such an event, Performing Settling
17 Defendants shall furnish to EPA a written report, signed by an authorized
18 representative of the Performing Settling Defendants, setting forth the events that
19 occurred and the measures taken, and to be taken, in response thereto. Within 30
20 days after the conclusion of such an event, Performing Settling Defendants shall
21 submit a report setting forth all actions taken in response thereto.

22 34. Performing Settling Defendants shall submit two copies of all plans,
23 reports, data, and other deliverables required by the SOW, the Remedial Action
24 Work Plan, or any other approved plans to EPA in accordance with the schedules
25 set forth in such plans. Performing Settling Defendants shall simultaneously
26 submit two copies of all such plans, reports and data to the DTSC. Upon request
27 by EPA or DTSC, and to the extent feasible, Performing Settling Defendants shall
28 submit in electronic form all or any portion of any deliverables Performing Settling

1 Defendants are required to submit pursuant to the provisions of this Consent
2 Decree.

3 35. All deliverables submitted by Performing Settling Defendants to EPA
4 or DTSC that purport to document Performing Settling Defendants' compliance
5 with the terms of this Consent Decree shall be signed by an authorized
6 representative of Performing Settling Defendants.

7 **XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

8 36. Initial Submission.

9 (a) After review of any plan, report or other item which is required
10 to be submitted for approval pursuant to this Consent Decree, EPA shall,
11 after reasonable opportunity for review and comment by DTSC: (1)
12 approve, in whole or in part, the submission; (2) approve the submission
13 upon specified conditions; (3) disapprove, in whole or in part, the
14 submission; or (4) any combination of the foregoing.

15 (b) EPA may also modify the initial submission to cure deficiencies
16 in the submission if: (1) EPA determines that disapproving the submission
17 and awaiting a resubmission would cause substantial disruption to the Work;
18 or (2) previous submission(s) have been disapproved due to material defects
19 and the deficiencies in the initial submission under consideration indicate a
20 bad faith lack of effort to submit an acceptable plan, report or deliverable.

21 37. Resubmissions. Upon receipt of a notice of disapproval under
22 Paragraph 36(3) or (4) or if required by a notice of approval upon specified
23 conditions under Paragraph 36(2), after reasonable opportunity for review and
24 comment by DTSC, Performing Settling Defendants shall, within 30 days or such
25 longer time as specified by EPA in such notice, correct the deficiencies and
26 resubmit the plan, report, or other deliverable for approval. After review of the
27 resubmitted plan, report, or other deliverable, EPA may: (a) approve, in whole or
28 in part, the resubmission; (b) approve the resubmission upon specified conditions;

(c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Performing Settling Defendants to correct the deficiencies; or (e) any combination of the foregoing

38. Material Defects. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 36(3) or 37(c) due to such material defect, then EPA shall provide notice of same to Performing Settling Defendants and provide a reasonable period within which to cure such defect. If the defect is not timely cured, the material defect shall constitute a lack of compliance for purposes of Paragraph 72. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Performing Settling Defendants' submissions under this Section.

39. Implementation. Upon approval or approval upon conditions of any plan, report, or other deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall be incorporated into and enforceable under this Consent Decree; and (b) Performing Settling Defendants shall take any action required by such plan, report, or other deliverable, or portion thereof, subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. The implementation of any non-deficient portion of a plan, report, or other deliverable submitted or resubmitted under Paragraph 36 or 37 shall not relieve Performing Settling Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

XII. PROJECT COORDINATORS

40. Within 20 days after lodging this Consent Decree, Performing Settling Defendants and EPA will notify each other, in writing, of the name, address, telephone number, and email address of their respective designated Project

1 Coordinators and Alternate Project Coordinators. If a Project Coordinator or
2 Alternate Project Coordinator initially designated is changed, the identity of the
3 successor will be given to the other Parties at least five working days before the
4 change occurs, unless impracticable, but in no event later than the actual day the
5 change is made. Performing Settling Defendants' Project Coordinator shall be
6 subject to disapproval by EPA, after reasonable opportunity for review and
7 comment by DTSC, and shall have the technical expertise sufficient to adequately
8 oversee all aspects of the Work. Performing Settling Defendants' Project
9 Coordinator shall not be an attorney for any Settling Defendant in this matter. He
10 or she may assign other representatives, including other contractors, to serve as a
11 Site representative for oversight of performance of daily operations during
12 remedial activities.

13 41. Plaintiffs may designate other representatives, including, but not
14 limited to, EPA and DTSC employees, and federal contractors and consultants, to
15 observe and monitor the progress of any activity undertaken pursuant to this
16 Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator
17 shall have the authority lawfully vested in a Remedial Project Manager ("RPM")
18 and an On-Scene Coordinator ("OSC") by the NCP, 40 C.F.R. Part 300. EPA's
19 Project Coordinator or Alternate Project Coordinator shall have authority,
20 consistent with the NCP, to halt any Work required by this Consent Decree and to
21 take any necessary response action when he or she determines that conditions at
22 the Site constitute an emergency situation or may present an immediate threat to
23 public health or welfare or the environment due to release or threatened release of
24 Waste Material.

25 42. EPA's Project Coordinator and Performing Settling Defendants'
26 Project Coordinator will meet on an "as needed" basis. DTSC's Project
27 Coordinator shall be allowed to participate in such meetings at DTSC's discretion.
28

1 **XIII. PERFORMANCE GUARANTEE**

2 43. In order to ensure the full and final completion of the Work,
 3 Performing Settling Defendants shall establish and maintain a performance
 4 guarantee, initially in the amount of \$15,000,000.00, for the benefit of EPA
 5 (hereinafter “Estimated Cost of the Work”). The performance guarantee, which
 6 must be satisfactory in form and substance to EPA, shall be in the form of one or
 7 more of the following mechanisms (provided that, if Performing Settling
 8 Defendants intend to use multiple mechanisms, such multiple mechanisms shall be
 9 limited to surety bonds guaranteeing payment, letters of credit, trust funds, and
 10 insurance policies):

11 a. A surety bond unconditionally guaranteeing payment and/or
 12 performance of the Work that is issued by a surety company among those
 13 listed as acceptable sureties on federal bonds as set forth in Circular 570 of
 14 the U.S. Department of the Treasury;

15 b. One or more irrevocable letters of credit, payable to or at the
 16 direction of EPA, that is issued by one or more financial institution(s)
 17 (1) that has the authority to issue letters of credit and (2) whose letter-of-
 18 credit operations are regulated and examined by a federal or state agency;

19 c. A trust fund established for the benefit of EPA that is
 20 administered by a trustee (1) that has the authority to act as a trustee and
 21 (2) whose trust operations are regulated and examined by a federal or state
 22 agency;

23 d. A policy of insurance that (1) provides EPA with acceptable
 24 rights as a beneficiary thereof; and (2) is issued by an insurance carrier (i)
 25 that is eligible to issue insurance policies in the applicable jurisdiction(s)
 26 and (ii) whose insurance operations are regulated and subject to examination
 27 by a federal or state agency;
 28

e. A demonstration by one or more Performing Settling Defendants that each such Performing Settling Defendant meets the financial test criteria of 40 C.F.R. Part 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's satisfaction; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (1) a direct or indirect parent company of a Performing Settling Defendant, or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Performing Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee) that it proposes to guarantee hereunder.

44. Performing Settling Defendants have selected, and EPA has found satisfactory, as an initial performance guarantee, pursuant to Paragraph 43(a)(b) and (d), a combination of surety bonds, letters of credit and policies of insurance in the forms attached hereto as Appendix J. Within ten days after the Effective Date, Performing Settling Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents attached hereto as Appendix J, and such performance guarantee shall thereupon be fully effective. Within 30 days after the Effective Date, Performing Settling

1 Defendants shall submit copies of all executed and/or otherwise finalized
2 instruments or other documents required in order to make the selected performance
3 guarantee(s) legally binding to the EPA Regional Financial Management Officer in
4 accordance with Section XXVI (Notices and Submissions) with a copy to the
5 United States.

6 45. If, at any time after the Effective Date and before the issuance of the
7 Certificate of Completion of the Work pursuant to Section XIV, Performing
8 Settling Defendants provide a performance guarantee for completion of the Work
9 by means of a demonstration or guarantee pursuant to Paragraph 43(e) or 43(f),
10 performing Settling Defendants shall also comply with the other relevant
11 requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless
12 otherwise provided in this Consent Decree, including but not limited to: (a) the
13 initial submission of required financial reports and statements from the relevant
14 entity's chief financial officer ("CFO") and independent certified public accountant
15 ("CPA"), in the form prescribed by EPA in its test sample CFO letters and CPA
16 reports available at: [http://www.epa.gov/compliance/resources/policies/cleanup/
17 superfund/fa-test-samples.pdf](http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf); (b) the annual resubmission of such reports and
18 statements within 90 days after the close of each such entity's fiscal year; and (c)
19 the prompt notification of EPA after each such entity determines that it no longer
20 satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in
21 any event within 90 days after the close of any fiscal year in which such entity no
22 longer satisfies such financial test requirements. For purposes of the performance
23 guarantee mechanisms specified in this Section XIII only, references in 40 C.F.R.
24 Part 264, Subpart H, to "closure", "post-closure", and "plugging and
25 abandonment" shall be deemed to include the Work; the terms "current closure
26 cost estimate," "current post-closure cost estimate," and "current plugging and
27 abandonment cost estimate" shall be deemed to include the Estimated Cost of the
28 Work; the terms "owner" and "operator" shall be deemed to refer to each

1 Performing Settling Defendant making a demonstration under Paragraph 43; and
2 the terms “facility” and “hazardous waste facility” shall be deemed to include the
3 Site.

4 46. In the event that EPA determines at any time that a performance
5 guarantee provided by a Performing Settling Defendant is inadequate or otherwise
6 no longer satisfies the requirements set forth in this Section, whether due to an
7 increase in the estimated cost of implementing the Work, or for any other reason,
8 or in the event that any Performing Settling Defendant becomes aware of
9 information indicating that a performance guarantee provided pursuant to this
10 Section is inadequate or otherwise no longer satisfies the requirements set forth in
11 this Section, whether due to an increase in the estimated cost of completing the
12 Work or for any other reason, Performing Settling Defendants, within 30 days after
13 receipt of notice of EPA’s determination or, as the case may be, within 30 days
14 after any Performing Settling Defendant becoming aware of such information,
15 shall obtain and present to EPA for approval a proposal for a revised or alternative
16 form of performance guarantee listed in Paragraph 43 that satisfies all requirements
17 set forth in this Section XIII; provided, however, that if any Performing Settling
18 Defendant cannot obtain such revised or alternative form of performance guarantee
19 within such 30-day period, and provided further that a Performing Settling
20 Defendant shall have commenced to obtain such revised or alternative form of
21 performance guarantee within such 30-day period, and thereafter diligently
22 proceeds to obtain the same, EPA shall extend such period for such time as is
23 reasonably necessary for the Performing Settling Defendant in the exercise of due
24 diligence to obtain such revised or alternative form of performance guarantee, such
25 additional period not to exceed 30 days. In seeking approval for a revised or
26 alternative form of performance guarantee, Performing Settling Defendants shall
27 follow the procedures set forth in Paragraph 48. Performing Settling Defendants’
28 inability to post a performance guarantee for completion of the Work shall in no

1 way excuse performance of any other requirements of this Consent Decree,
2 including, without limitation, the obligation of Performing Settling Defendants to
3 complete the Work in strict accordance with the terms of this Consent Decree.

4 47. Funding for Work Takeover. The commencement of any Work
5 Takeover pursuant to Paragraph 90 shall trigger EPA's right to receive the benefit
6 of any performance guarantee(s) provided pursuant to Paragraphs 43.a, 43.b, 43.c,
7 43.d or 43.f, and at such time EPA shall have immediate access to resources
8 guaranteed under any such performance guarantee(s), whether in cash or in kind,
9 as needed to continue and complete the Work assumed by EPA under the Work
10 Takeover. Upon the commencement of any Work Takeover, if (a) for any reason
11 EPA is unable to promptly secure the resources guaranteed under any such
12 performance guarantee(s), whether in cash or in kind, necessary to continue and
13 complete the Work assumed by EPA under the Work Takeover, or (b) in the event
14 that the performance guarantee involves a demonstration of satisfaction of the
15 financial test criteria pursuant to Paragraph 43.e or Paragraph 43.f(2), Performing
16 Settling Defendants (or, in the case of Paragraph 43.f(2), the guarantor) shall, upon
17 written demand from EPA, deposit into a special account within the EPA
18 Hazardous Substance Superfund, in immediately available funds and without
19 setoff, counterclaim, or condition of any kind, a cash amount up to but not
20 exceeding the estimated cost of completing the Work as of such date, as
21 determined by EPA. In addition, if at any time EPA and/or the Performing Settling
22 Defendants is/are notified by the issuer of a performance guarantee that such issuer
23 intends to cancel the performance guarantee mechanism it has issued, then, unless
24 Performing Settling Defendants provide a substitute performance guarantee
25 mechanism in accordance with this Section XIII no later than 30 days prior to the
26 impending cancellation date, EPA shall be entitled (as of and after the date that is
27 30 days prior to the impending cancellation) to draw fully on the funds guaranteed
28 under the then-existing performance guarantee. All EPA Work Takeover Costs not

1 reimbursed under this Paragraph shall be reimbursed under Section XVI (Payments
2 for Response Costs).

3 48. Modification of Amount and/or Form of Performance Guarantee

4 a. Reduction of Amount of Performance Guarantee. If
5 Performing Settling Defendants believe that the estimated cost of completing
6 the Work has diminished below the amount set forth in Paragraph 43,
7 Performing Settling Defendants may, on any anniversary of the Effective
8 Date, or at any other time agreed to by the Parties, petition EPA in writing to
9 reduce the amount of the performance guarantee provided pursuant to this
10 Section so that the amount of the performance guarantee is equal to the
11 estimated cost of completing the Work. Performing Settling Defendants
12 shall submit a written proposal for such reduction to EPA that shall specify,
13 at a minimum, the estimated cost of completing the Work and the basis upon
14 which such cost was calculated. In seeking approval for a reduction in the
15 amount of the performance guarantee, Performing Settling Defendants shall
16 follow the procedures set forth in Paragraph 48(b) for requesting a revised or
17 alternative form of performance guarantee, except as specifically provided in
18 this Paragraph 48(a). If EPA decides to accept Performing Settling
19 Defendants' proposal for reduction in the amount of the performance
20 guarantee, either to the amount set forth in Performing Settling Defendants'
21 written proposal or to some other amount as selected by EPA, EPA will
22 notify the petitioning Performing Settling Defendants of such decision in
23 writing. Upon EPA's acceptance of a reduction in the amount of the
24 performance guarantee, the Estimated Cost of the Work shall be deemed to
25 be the estimated cost of completing the Work set forth in EPA's written
26 decision. After receiving EPA's written decision, Performing Settling
27 Defendants may reduce the amount of the performance guarantee in
28 accordance with and to the extent permitted by such written acceptance, and

1 shall submit copies of all executed and/or otherwise finalized instruments or
2 other documents required in order to make the selected performance
3 guarantee(s) legally binding in accordance with Paragraph 44. In the event
4 of a dispute, Performing Settling Defendants may reduce the amount of the
5 performance guarantee required hereunder only in accordance with a final
6 administrative or judicial decision resolving such dispute pursuant to Section
7 XIX (Dispute Resolution). Unless agreed to by EPA and the Performing
8 Settling Defendants in advance, no change to the form or terms of any
9 performance guarantee provided under this Section, other than a reduction in
10 amount, is authorized except as provided in Paragraph 48(b).

11 b. Change of Form of Performance Guarantee

12 (1) If, after the Effective Date, Performing Settling
13 Defendant(s) desire to change the form or terms of any performance
14 guarantee provided pursuant to this Section, Performing Settling
15 Defendants may, on any anniversary of the Effective Date or at any
16 other time agreed to by the Parties, petition EPA in writing to request
17 a change in the form or terms of the performance guarantee provided
18 hereunder. The submission of such proposed revised or alternative
19 performance guarantee shall be as provided in Paragraph 48(b)(2).
20 Any decision made by EPA on a petition submitted under this
21 Paragraph shall be made in EPA's sole and unreviewable discretion,
22 and such decision shall not be subject to challenge by Performing
23 Settling Defendants pursuant to the dispute resolution provisions of
24 this Consent Decree or in any other forum.

25 (2) Performing Settling Defendants shall submit a written
26 proposal for a revised or alternative performance guarantee to EPA
27 that shall specify, at a minimum, the estimated cost of completing the
28 Work, the basis upon which such cost was calculated, and the

1 proposed revised performance guarantee, including all proposed
2 instruments or other documents required in order to make the
3 proposed performance guarantee legally binding. The proposed
4 revised or alternative performance guarantee must satisfy all
5 requirements set forth or incorporated by reference in this Section.
6 Performing Settling Defendants shall submit such proposed revised or
7 alternative performance guarantee to the EPA Regional Financial
8 Management Officer in accordance with Section XXVI (Notices and
9 Submissions). EPA will notify Performing Settling Defendants in
10 writing of its decision to accept or reject a revised or alternative
11 performance guarantee submitted pursuant to this Paragraph. Within
12 30 days after receiving a written decision approving the proposed
13 revised or alternative performance guarantee, Performing Settling
14 Defendants shall execute or otherwise finalize all instruments or other
15 documents required in order to make the selected performance
16 guarantee legally binding in a form substantially identical to the
17 documents submitted to EPA as part of the proposal, and such
18 performance guarantee(s) shall thereupon be fully effective.
19 Performing Settling Defendants shall submit copies of all executed
20 and/or otherwise finalized instruments or other documents required in
21 order to make the selected performance guarantee(s) legally binding
22 to the EPA Regional Financial Management Officer within 30 days
23 after receiving a written decision approving the proposed revised or
24 alternative performance guarantee in accordance with Section XXVI
25 (Notices and Submissions) and to the United States and EPA as
26 specified in Section XXVI.

27 c. Release of Performance Guarantee. Performing Settling
28 Defendants shall not release, cancel, or discontinue any performance

1 guarantee provided pursuant to this Section except as provided in this
 2 Paragraph. If Performing Settling Defendants receive written notice from
 3 EPA in accordance with Paragraph 49(b) that the Work has been fully and
 4 finally completed in accordance with the terms of this Consent Decree, or if
 5 EPA otherwise so notifies Performing Settling Defendants in writing,
 6 Performing Settling Defendants may thereafter release, cancel, or
 7 discontinue the performance guarantee(s) provided pursuant to this Section.
 8 In the event of a dispute, Performing Settling Defendants may release,
 9 cancel, or discontinue the performance guarantee(s) required hereunder only
 10 in accordance with a final administrative or judicial decision resolving such
 11 dispute pursuant to Section XIX (Dispute Resolution).

12 **XIV. CERTIFICATE OF COMPLETION**

13 49. Completion of the Remedial Action.

14 a. Within 90 days after Performing Settling Defendants conclude
 15 that the Remedial Action has been fully performed, and the Performance
 16 Standards have been achieved, Performing Settling Defendants shall
 17 schedule and conduct a pre-certification inspection to be attended by
 18 Performing Settling Defendants, DTSC and EPA. If, after the pre-
 19 certification inspection, Performing Settling Defendants still believe that the
 20 Remedial Action has been fully performed and the Performance Standards
 21 have been achieved, they shall submit a written report, with a copy to DTSC,
 22 requesting certification to EPA for approval pursuant to Section XI (EPA
 23 Approval of Plans and Other Submissions) within 30 days after the
 24 inspection. In the report, a registered professional engineer and Performing
 25 Settling Defendants' Project Coordinator, or other authorized representative,
 26 shall state that the Remedial Action has been completed in full satisfaction
 27 of the requirements of this Consent Decree. The written report shall include
 28 as-built drawings signed and stamped by a professional engineer. The report

1 shall contain the following statement, signed by an authorized representative
2 of Performing Settling Defendants or Performing Settling Defendants'
3 Project Coordinator:

4 I certify under penalty of law that this document and all
5 attachments were prepared under my direction or supervision in
6 accordance with a system designed to assure that qualified
7 personnel properly gather and evaluate the information
8 submitted. Based on my inquiry of the person or persons who
9 manage the system, or those persons directly responsible for
10 gathering the information, the information submitted is, to the
11 best of my knowledge and belief, true, accurate, and complete.
12 I am aware that there are significant penalties for submitting
13 false information, including the possibility of fine and
14 imprisonment for knowing violations.

15 If, after completion of the pre-certification inspection and receipt and review
16 of the written report, EPA, after reasonable opportunity for review and
17 comment by DTSC, determines that the Remedial Action or any portion
18 thereof has not been completed in accordance with this Consent Decree or
19 that the Performance Standards have not been achieved, EPA will notify
20 Performing Settling Defendants in writing of the activities that must be
21 undertaken by Performing Settling Defendants pursuant to this Consent
22 Decree to complete the Remedial Action and achieve the Performance
23 Standards, provided, however, that EPA may only require Performing
24 Settling Defendants to perform such activities pursuant to this Paragraph to
25 the extent that such activities are consistent with the "scope of the remedy
26 set forth in the ROD" as that term is defined in Paragraph 13. EPA will set
27 forth in the notice a schedule for performance of such activities consistent
28 with the Consent Decree and the SOW or require Performing Settling

1 Defendants to submit a schedule to EPA for approval pursuant to Section XI
2 (EPA Approval of Plans and Other Submissions). Performing Settling
3 Defendants shall perform all activities described in the notice in accordance
4 with the specifications and schedules established pursuant to this Paragraph,
5 subject to their right to invoke the dispute resolution procedures set forth in
6 Section XIX (Dispute Resolution).

7 b. If EPA, after reasonable opportunity for review and comment
8 by DTSC, concludes, based on the initial or any subsequent report
9 requesting Certification of Completion of the Remedial Action, that the
10 Remedial Action has been performed in accordance with this Consent
11 Decree and that the Performance Standards have been achieved, EPA will
12 timely so certify in writing to Performing Settling Defendants. This
13 certification shall constitute the Certification of Completion of the Remedial
14 Action for purposes of this Consent Decree, including, but not limited to,
15 Section XXI (Covenants by Plaintiffs). Certification of Completion of the
16 Remedial Action shall not affect Settling Defendants' remaining obligations
17 under this Consent Decree.

18 50. Completion of the Work.

19 a. Within 90 days after Performing Settling Defendants conclude
20 that all phases of the Work, other than any remaining activities required
21 under Section VII (Remedy Review) have been fully performed, Performing
22 Settling Defendants shall schedule and conduct a pre-certification inspection
23 to be attended by Performing Settling Defendants, DTSC and EPA. If, after
24 the pre-certification inspection, Performing Settling Defendants still believe
25 that the Work has been fully performed, Performing Settling Defendants
26 shall submit to EPA and DTSC a written report by a registered professional
27 engineer stating that the Work has been completed in full satisfaction of the
28 requirements of this Consent Decree. The report shall contain the statement

1 set forth in Paragraph 49 signed by an authorized representative of
 2 Performing Settling Defendants or Performing Settling Defendants' Project
 3 Coordinator. If, after review of the written report, EPA, after reasonable
 4 opportunity for review and comment by DTSC, determines that any portion
 5 of the Work has not been completed in accordance with this Consent Decree,
 6 EPA will notify Performing Settling Defendants in writing of the activities
 7 that must be undertaken by Performing Settling Defendants pursuant to this
 8 Consent Decree to complete the Work, provided, however, that EPA may
 9 only require Performing Settling Defendants to perform such activities
 10 pursuant to this Paragraph to the extent that such activities are consistent
 11 with the "scope of the remedy set forth in the ROD", as that term is defined
 12 in Paragraph 13. EPA will set forth in the notice a schedule for performance
 13 of such activities consistent with the ROD and the SOW or require
 14 Performing Settling Defendants to submit a schedule to EPA for approval
 15 pursuant to Section XI (EPA Approval of Plans and Other Submissions).
 16 Performing Settling Defendants shall perform all activities described in the
 17 notice in accordance with the specifications and schedules established
 18 therein, subject to their right to invoke the dispute resolution procedures set
 19 forth in Section XIX (Dispute Resolution).

20 b. If EPA, after reasonable opportunity for review and comment
 21 by DTSC, concludes, based on the initial or any subsequent request for
 22 Certification of Completion of the Work by Performing Settling Defendants,
 23 that the Work has been performed in accordance with this Consent Decree,
 24 EPA will so notify Performing Settling Defendants in writing.

25 **XV. EMERGENCY RESPONSE**

26 51. If any action or occurrence during the performance of the Work
 27 causes or threatens a release of Waste Material from the Site that constitutes an
 28 emergency situation or may present an immediate threat to public health or welfare

1 or the environment, Performing Settling Defendants shall, subject to Paragraph 52,
 2 immediately take all appropriate action to prevent, abate, or minimize such release
 3 or threat of release, and shall immediately notify the EPA's Project Coordinator,
 4 or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator.
 5 If neither of these persons is available, the Performing Settling Defendant shall
 6 notify the EPA Emergency Response Unit, Region IX. Performing Settling
 7 Defendants shall take such actions in consultation with EPA's Project Coordinator
 8 or other available authorized EPA officer and in accordance with all applicable
 9 provisions of the Health and Safety Plans, the Contingency Plans, and any other
 10 applicable plans or documents developed pursuant to the SOW. In the event that
 11 Performing Settling Defendants fail to take appropriate response actions as
 12 required by this Section and EPA, or as appropriate, DTSC, takes such action
 13 instead, Performing Settling Defendants shall reimburse EPA and DTSC for all
 14 costs of the response action not inconsistent with the NCP under Section XVI
 15 (Payments for Response Costs).

16 52. Subject to Section XXI (Covenants by Plaintiffs), nothing in the
 17 preceding Paragraph or in this Consent Decree shall be deemed to limit any
 18 authority of the United States or DTSC (a) to take all appropriate action to protect
 19 human health and the environment or to prevent, abate, respond to, or minimize an
 20 actual or threatened release of Waste Material on, at, or from the Site, or (b) to
 21 direct or order such action, or seek an order from the Court, to protect human
 22 health and the environment or to prevent, abate, respond to, or minimize an actual
 23 or threatened release of Waste Material on, at, or from the Site.

24 **XVI. PAYMENTS FOR RESPONSE COSTS**

25 53. Payment by Settling Defendants for Past Response Costs

26 a. Within 30 days after the Effective Date, Performing Settling
 27 Defendants shall pay to EPA \$2,617,266.14 (Two Million, Six Hundred and
 28 Seventeen Thousand, Two Hundred Sixty-Six Dollars and Fourteen Cents)

1 in payment for Past Response Costs and to DTSC \$53,599.49 (Fifty-Three
2 Thousand, Nine Hundred and Ninety-Nine Dollars and Forty-Nine Cents) in
3 payment for Past Response Costs.

4 b. Ability-to-Pay Settling Defendants shall pay to EPA the
5 amounts set out in Appendix F at the times set out therein.

6 c. Each De Minimis Settling Defendant shall pay to EPA the
7 amount set out for it in Appendix G at the time set out therein.

8 d. The total amount to be paid by Settling Defendants to EPA
9 pursuant to Paragraph 53(a)-(c) shall be deposited by EPA in the Cooper
10 Drum Company Special Account to be retained and used to conduct or
11 finance response actions at or in connection with the Site or to be transferred
12 by EPA to the EPA Hazardous Substance Superfund. Payments to DTSC
13 under this Section shall be deposited in the Toxic Substances Control
14 Account established pursuant to Health and Safety Code § 25173.6.

15 54. Payments by Performing Settling Defendants for Interim Response
16 Costs and Future Response Costs. Performing Settling Defendants shall pay to
17 EPA and DTSC all Interim Response Costs and all Future Response Costs not
18 inconsistent with the NCP incurred at the Site.

19 a. Performing Settling Defendants shall pay to EPA and DTSC all
20 Interim Response Costs within 60 days after receipt of bills for Interim
21 Response Costs from EPA and DTSC respectively, in accordance with
22 Paragraph 55(a) (Instructions for Past Response Costs Payments and Interim
23 Response Costs Payments). The bill from EPA for Interim Response Costs
24 will include a regionally-prepared cost summary that includes direct and
25 indirect costs incurred by EPA and its contractors along with backup
26 documentation for such costs and a DOJ cost summary along with back up
27 documentation for such costs. The bill from DTSC for Interim Response
28 Costs will include a DTSC-prepared cost summary that includes direct and

1 indirect costs incurred by DTSC and its contractors along with backup
2 documentation for those costs.

3 b. On a periodic basis, EPA will send Performing Settling
4 Defendants a bill for Future Response Costs requiring payment that includes
5 a regionally-prepared cost summary that includes direct and indirect costs
6 incurred by EPA and its contractors and a DOJ case cost summary along
7 with backup documentation for those costs. On a periodic basis, DTSC will
8 send Performing Settling Defendants a bill for Future Response Costs
9 requiring payment that includes a DTSC-prepared cost summary that
10 includes direct and indirect costs incurred by DTSC and its contractors along
11 with backup documentation for those costs. Performing Settling Defendants
12 shall make all payments within 60 days after Performing Settling
13 Defendants' receipt of each bill requiring payment, in accordance with
14 Paragraph 55(b) (Instructions for Future Response Costs Payments). The
15 dispute resolution procedures set forth in Section XIX (Dispute Resolution)
16 shall be the exclusive mechanism for resolving disputes regarding
17 Performing Settling Defendants' obligation to reimburse the United States
18 for its Future Response Costs.

19 c. The total amount to be paid to EPA by Performing Settling
20 Defendants pursuant to Paragraphs 54(a) and (b) shall be deposited in the
21 Cooper Drum Company Special Account to be retained and used to conduct
22 or finance response actions at or in connection with the Site, or to be
23 transferred by EPA to the EPA Hazardous Substance Superfund.

24 **55. Payment Instructions for Settling Defendants.**

25 a. Instructions for Past Response Costs Payments and Interim
26 Response Cost Payments. All payments to the United States required
27 elsewhere in this Consent Decree to be made in accordance with this
28 Paragraph 55 shall be made at <https://www.pay.gov> to the U.S. Department

1 of Justice account, in accordance with instructions provided to Settling
 2 Defendants by the Financial Litigation Unit (“FLU”) of the United States
 3 Attorney’s Office for the Central District of California, Western Division,
 4 after the Effective Date or as otherwise agreed to by the Parties. The
 5 payment instructions provided by the Financial Litigation Unit shall include
 6 a Consolidated Debt Collection System (“CDCS”) number, which shall be
 7 used to identify all payments required to be made in accordance with this
 8 Consent Decree. The FLU shall provide the payment instructions to:

9 Kenny Ogilvie
 10 CDCPG Project Coordinator
 11 EHS Support LLC
 12 110 Kentzel Road
 13 Pittsburgh, PA 15237412-855-3047 (Direct)
 14 Kenny.Ogilvie@ehs-support.com

15 on behalf of Settling Defendants. Settling Defendants may change the
 16 individual(s) to receive payment instructions on their behalf by providing
 17 written notice of such change in accordance with Section XXVII (Notices
 18 and Submissions). When making payments under this Paragraph 55(a),
 19 Settling Defendants shall also comply with Paragraph 55(c).

20 b. Instructions for Future Response Costs Payments. All
 21 payments required, elsewhere in this Consent Decree, to be made in
 22 accordance with this Paragraph 55(b) shall be made by Fedwire EFT to:

23 Federal Reserve Bank of New York
 24 ABA: 021030004
 25 Account Number: 68010727
 26 SWIFT Address: FRNYUS33
 27 33 Liberty Street
 28 New York, NY 10045

Field Tag 4200 of the Fedwire message should read as follows:
 “D 68010727 Environmental Protection Agency”.

c. Instructions for All Payments to EPA. All payments made under Paragraphs 55(a) (Instructions for Past Response Costs Payments) or 55(b) (Instructions for Future Response Costs Payments) shall reference the CDCS Number, Site/Spill ID Number 091NPS, and DOJ case Number 90-11-2-09084. At the time of any payment required to be made in accordance with Paragraphs 53 or 54, Settling Defendants shall send notice that payment has been made to the United States and to EPA, in accordance with Section XXVI (Notices and Submissions) and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall also reference the CDCS Number, Site/Spill ID Number, and DOJ Case Number.

d. Instructions for all Payments to DTSC. All payments made by Settling Defendants to DTSC pursuant to this Consent Decree shall be made by check made payable to “DTSC” and shall bear on the face the project code of the Site (Site 300251). Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 I Street, 21st Floor
PO Box 806
Sacramento, CA 95812-0806

A photocopy of each payment check shall also be sent to the person designated by DTSC to receive submittals under this Consent Decree.

56. a. Performing Settling Defendants may contest any Future Response Costs billed under Paragraph 54 (“Payments by Performing Settling Defendants for Future Response Costs”) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe that EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days

1 after receipt of the bill and must be sent to the United States pursuant to Section
2 XXVI (Notices and Submissions). Any such objection shall specifically identify
3 the contested Future Response Costs and the basis for objection. In the event of an
4 objection, Performing Settling Defendants shall pay all uncontested Future
5 Response Costs to the United States within 60 days after Performing Settling
6 Defendants' receipt of the bill requiring payment. Simultaneously, Performing
7 Settling Defendants shall establish, in a duly chartered bank or trust company, an
8 interest-bearing escrow account that is insured by the Federal Deposit Insurance
9 Corporation ("FDIC") and remit to that escrow account funds equivalent to the
10 amount of the contested Future Response Costs. Performing Settling Defendants
11 shall send to the United States, as provided in Section XXVI (Notices and
12 Submissions), a copy of the transmittal letter and check paying the uncontested
13 Future Response Costs, and a copy of the correspondence that establishes and
14 funds the escrow account, including, but not limited to, information containing the
15 identity of the bank or trust company and account under which the escrow account
16 is established as well as a statement showing the initial balance of the escrow
17 account. Simultaneously with establishment of the escrow account, Performing
18 Settling Defendants shall initiate the Dispute Resolution procedures in Section
19 XIX (Dispute Resolution). If the United States prevails in the dispute, Performing
20 Settling Defendants shall pay the sums due (with accrued Interest) to the United
21 States within ten days after resolution of the dispute. If Performing Settling
22 Defendants prevail concerning any aspect of the contested costs, Performing
23 Settling Defendants shall pay that portion of the costs (plus associated accrued
24 Interest) for which they did not prevail to the United States within ten days after
25 resolution of the dispute. Performing Settling Defendants shall be disbursed any
26 balance of the escrow account. All payments to the United States under this
27 Paragraph shall be made in accordance with Paragraph 55(b) (Instructions for
28 Future Response Costs Payments).

b. If Performing Settling Defendants dispute a DTSC billing, or any part thereof, Performing Settling Defendants shall notify DTSC's assigned project manager and attempt to informally resolve the dispute with DTSC's project coordinator and branch chief. If Performing Settling Defendants desire to formally request dispute resolution with regard to the billing, Performing Settling Defendants shall file a request for dispute resolution in writing within 45 days of receipt of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the invoice, Performing Settling Defendants shall pay all costs which are undisputed in accordance with Paragraph 55(d). The filing of a notice of dispute pursuant to this Paragraph shall not stay the accrual of Interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

Chief, Collections and Resolution Unit
 Department of Toxic Substances Control
 PO Box 806
 Sacramento, CA 96812-0806

A copy of the written request for dispute resolution shall also be sent to the person designated by DTSC to receive submittals under this Consent Decree. A decision on the billing dispute will be rendered by the Chief, Collections and Resolution Unit, or other DTSC designee.

c. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanism for resolving disputes regarding Performing Settling Defendants' obligation to reimburse the United States or DTSC for its Future Response Costs.

57. Interest. In the event that any payment for Past Response Costs or Future Response Costs required under this Section is not made by the date

1 required, affected Settling Defendants shall pay Interest to EPA or DTSC on the
 2 unpaid balance as appropriate. The Interest to be paid on Past Response Costs
 3 under this Paragraph shall begin to accrue on the date due. The Interest on Future
 4 Response Costs shall begin to accrue on the due date of the bill. The Interest shall
 5 accrue through the date of Settling Defendants' payment. Payments of Interest
 6 made under this Paragraph shall be in addition to such other remedies or sanctions
 7 available to Plaintiffs by virtue of Settling Defendants' failure to make timely
 8 payments under this Section including, but not limited to, payment of stipulated
 9 penalties pursuant to Paragraph 79.

10 58. Payments between Settling Defendants. All payments to Performing
 11 Settling Defendants by Contributing Settling Defendants will be made in
 12 accordance with Appendix H.

13 **XVII. INDEMNIFICATION AND INSURANCE**

14 59. Performing Settling Defendants' Indemnification of the United States.

15 a. The United States and DTSC do not assume any liability by
 16 entering into this Consent Decree or by virtue of any designation of
 17 Performing Settling Defendants as EPA's authorized representatives under
 18 Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Performing Settling
 19 Defendants shall indemnify, save and hold harmless the United States and its
 20 officials, agents, employees, contractors, subcontractors, and representatives
 21 for or from any and all claims or causes of action arising from, or on account
 22 of, negligent or other wrongful acts or omissions of Performing Settling
 23 Defendants, their officers, directors, employees, agents, contractors,
 24 subcontractors, and any persons acting on their behalf or under their control,
 25 in carrying out activities pursuant to this Consent Decree, including, but not
 26 limited to, any claims arising from any designation of Performing Settling
 27 Defendants as EPA's authorized representatives under Section 104(e) of
 28 CERCLA. Further, Performing Settling Defendants agree to pay the United

1 States and DTSC all costs they incur including, but not limited to, attorneys'
2 fees and other expenses of litigation and settlement arising from, or on
3 account of, claims made against the United States or DTSC based on
4 negligent or other wrongful acts or omissions of Performing Settling
5 Defendants, their officers, directors, employees, agents, contractors,
6 subcontractors, and any persons acting on their behalf or under their control,
7 in carrying out activities pursuant to this Consent Decree. The United States
8 and DTSC shall not be held out as parties to any contract entered into by or
9 on behalf of Performing Settling Defendants in carrying out activities
10 pursuant to this Consent Decree. Neither Performing Settling Defendants
11 nor any such contractor shall be considered an agent of the United States or
12 DTSC.

13 b. The United States and DTSC shall give Performing Settling
14 Defendants notice of any claim for which the United States or DTSC plans
15 to seek indemnification pursuant to this Paragraph 59(b), and shall consult
16 with Performing Settling Defendants prior to settling such claim.

17 60. Performing Settling Defendants covenant not to sue and agree not to
18 assert any claims or causes of action against the United States or DTSC for
19 damages or reimbursement or for set-off of any payments made or to be made to
20 the United States or DTSC, arising from or on account of any contract, agreement,
21 or arrangement between any one or more of Performing Settling Defendants and
22 any person for performance of Work on or relating to the Site, including, but not
23 limited to, claims on account of construction delays. In addition, Performing
24 Settling Defendants shall indemnify and hold harmless the United States and
25 DTSC with respect to any and all claims for damages or reimbursement arising
26 from or on account of any contract, agreement, or arrangement between any one or
27 more of Performing Settling Defendants and any person for performance of Work
28

1 on or relating to the Site, including, but not limited to, claims on account of
2 construction delays.

3 61. No later than 15 days before commencing any on-site Work,
4 Performing Settling Defendants or their contractors shall secure, and shall maintain
5 until the first anniversary after EPA's Certification of Completion pursuant to
6 Section XIV (Certificate of Completion), commercial general liability insurance
7 with limits of \$5,000,000 (Five Million Dollars), for any one occurrence, and
8 automobile liability insurance with limits of \$2,000,000 (Two Million Dollars),
9 combined single limit, naming the United States as an additional insured with
10 respect to all liability arising out of the activities performed by or on behalf of
11 Performing Settling Defendants pursuant to this Consent Decree. In addition, for
12 the duration of this Consent Decree, Performing Settling Defendants shall satisfy,
13 or shall ensure that their respective contractors or subcontractors satisfy, all
14 applicable laws and regulations regarding the provision of worker's compensation
15 insurance for all persons performing the Work on behalf of Performing Settling
16 Defendants in furtherance of this Consent Decree. Prior to commencement of the
17 Work under this Consent Decree, Performing Settling Defendants shall provide to
18 EPA and DTSC certificates of such insurance and a copy of each insurance policy.
19 Performing Settling Defendants shall resubmit such certificates and copies of
20 policies each year on the anniversary of the Effective Date. If Performing Settling
21 Defendants demonstrate by evidence satisfactory to EPA and DTSC that any
22 contractor or subcontractor maintains insurance equivalent to that described above,
23 or insurance covering the same risks but in a lesser amount, then, with respect to
24 that contractor or subcontractor, Performing Settling Defendants need provide only
25 that portion of the insurance described above which is not maintained by the
26 contractor or subcontractor.

27 // //

28 // //

1 **XVIII. FORCE MAJEURE**

2 62. “Force Majeure,” for purposes of this Consent Decree, is defined as
 3 any event arising from causes beyond the control of Performing Settling
 4 Defendants, of any entity controlled by Performing Settling Defendants, or of
 5 Performing Settling Defendants’ contractors that delays or prevents the
 6 performance of any obligation under this Consent Decree despite Performing
 7 Settling Defendants’ best efforts to fulfill the obligation. The requirement that
 8 Performing Settling Defendants exercise “best efforts to fulfill the obligation”
 9 includes using best efforts to anticipate any potential force majeure and best efforts
 10 to address the effects of any potential force majeure (a) as it is occurring and (b)
 11 following the potential force majeure such that the delay and any adverse effects of
 12 the delay are minimized to the greatest extent possible. “Force Majeure” does not
 13 include financial inability to complete the Work or a failure to attain the
 14 Performance Standards unless such financial inability is solely caused by third
 15 parties or circumstances outside the control of the Performing Settling Defendants.

16 63. If any event occurs or has occurred that may delay the performance of
 17 any obligation under this Consent Decree for which Performing Settling
 18 Defendants intend or may intend to assert a claim of force majeure, Performing
 19 Settling Defendants shall notify EPA’s Project Coordinator orally or, in his or her
 20 absence, EPA’s Alternate Project Coordinator or, in the event both of EPA’s
 21 designated representatives are unavailable, the Assistant Director of the Superfund
 22 Division, EPA Region IX, within five days of when Performing Settling
 23 Defendants first knew that the event would cause a delay. Within ten days
 24 thereafter, Performing Settling Defendants shall provide in writing to EPA and
 25 DTSC an explanation and description of the reasons for the delay; the anticipated
 26 duration of the delay; all actions taken or to be taken to prevent or minimize the
 27 delay; a schedule for implementation of any measures to be taken to prevent or
 28 mitigate the delay or the effect of the delay; Performing Settling Defendants’

1 rationale for attributing such delay to a force majeure; and a statement as to
2 whether, in the opinion of Performing Settling Defendants, such event may cause
3 or contribute to an endangerment to public health, welfare or the environment.
4 Performing Settling Defendants shall include with any notice all available
5 documentation supporting their claim that the delay was attributable to a force
6 majeure. Performing Settling Defendants shall be deemed to know of any
7 circumstance of which Performing Settling Defendants or Performing Settling
8 Defendants' contractors knew or should have known. Failure to comply with the
9 above requirements regarding an event shall preclude Performing Settling
10 Defendants from receiving a determination of Force Majeure regarding that event,
11 provided, however, that if EPA, despite the late notice, is able to assess to its
12 satisfaction whether the event is a Force Majeure under Paragraph 62 and whether
13 Performing Settling Defendants have exercised their best efforts under Paragraph
14 62, EPA, in its unreviewable discretion, may excuse in writing Performing Settling
15 Defendants' failure to submit timely notices under this Paragraph.

16 64. If EPA, after reasonable opportunity for review and comment by
17 DTSC, agrees that the delay or anticipated delay is attributable to a Force Majeure,
18 the time for performance of the obligations under this Consent Decree that are
19 affected by the Force Majeure will be extended by EPA, after reasonable
20 opportunity for review and comment by DTSC, for such time as is necessary to
21 complete those obligations. An extension of the time for performance of the
22 obligations affected by the Force Majeure shall not, of itself, extend the time for
23 performance of any other obligation. If EPA does not agree that the delay or
24 anticipated delay has been or will be caused by a Force Majeure, EPA will
25 promptly notify Performing Settling Defendants in writing of its decision. If EPA,
26 after reasonable opportunity for review and comment by DTSC, agrees that the
27 delay is attributable to a Force Majeure, EPA will notify Performing Settling
28

1 Defendants in writing of the length of the extension, if any, for performance of the
2 obligations affected by the Force Majeure.

3 65. If Performing Settling Defendants elect to invoke the dispute
4 resolution procedures set forth in Section XIX (Dispute Resolution), they shall do
5 so no later than 15 days after receipt of EPA's notice. In any such proceeding,
6 Performing Settling Defendants shall have the burden of demonstrating by a
7 preponderance of the evidence that the delay or anticipated delay has been or will
8 be caused by a Force Majeure, that the duration of the delay or the extension
9 sought was or will be warranted under the circumstances, that best efforts were or
10 will be exercised to avoid and mitigate the effects of the delay, and that Performing
11 Settling Defendants complied with the requirements of Paragraphs 62 and 63. If
12 Performing Settling Defendants carry this burden, the delay at issue shall be
13 deemed not to be a violation by Performing Settling Defendants of the affected
14 obligation of this Consent Decree identified to EPA, DTSC and the Court.

15 **XIX. DISPUTE RESOLUTION**

16 66. Unless otherwise expressly provided for in this Consent Decree, the
17 dispute resolution procedures of this Section shall be the exclusive mechanism to
18 resolve disputes regarding this Consent Decree. However, the procedures set forth
19 in this Section shall not apply to actions by the United States and/or DTSC to
20 enforce obligations of Performing Settling Defendants that have not been disputed
21 in accordance with this Section.

22 67. Any dispute regarding this Consent Decree shall in the first instance
23 be the subject of informal negotiations between the parties to the dispute. The
24 period for informal negotiations shall not exceed 20 days from the time the dispute
25 arises, unless it is modified by written agreement of the parties to the dispute. The
26 dispute shall be considered to have arisen when one party sends the other parties a
27 written Notice of Dispute.
28

1 68. Statements of Position.

2 a. In the event that the parties cannot resolve a dispute by informal
3 negotiations under the preceding Paragraph, then the position advanced by
4 EPA and/or DTSC shall be considered binding unless, within 21 days after
5 the conclusion of the informal negotiation period, Performing Settling
6 Defendants invoke the formal dispute resolution procedures of this Section
7 by serving on the United States and/or DTSC a written Statement of Position
8 on the matter in dispute, including, but not limited to, any factual data,
9 analysis or opinion supporting that position and any supporting
10 documentation relied upon by Performing Settling Defendants. The
11 Statement of Position shall specify Performing Settling Defendants' position
12 as to whether formal dispute resolution should proceed under Paragraph 69
13 (Record Review) or Paragraph 70.

14 b. Within 30 days after receipt of Performing Settling Defendants'
15 Statement of Position, EPA and/or DTSC will serve on Performing Settling
16 Defendants its/their Statement of Position, including, but not limited to, any
17 factual data, analysis, or opinion supporting that position and all supporting
18 documentation relied upon by EPA and/or DTSC. EPA's and/or DTSC's
19 Statement of Position shall include a statement as to whether formal dispute
20 resolution should proceed under Paragraph 69 (Record Review) or
21 Paragraph 70. Within ten days after receipt of EPA's and/or DTSC's
22 Statement of Position, Performing Settling Defendants may submit a Reply.
23 In the event of a dispute between EPA and the Performing Settling
24 Defendants, DTSC shall have the option to submit a Statement of Position,
25 and DTSC's Statement of Position shall be part of the administrative record.
26 In the event of a dispute between DTSC and the Performing Settling
27 Defendants, EPA shall have the option to submit a Statement of Position,
28 and EPA's Statement of Position shall be part of the administrative record.

1 c. If there is disagreement between EPA and/or DTSC and
2 Performing Settling Defendants as to whether dispute resolution should
3 proceed under Paragraph 69 (Record Review) or Paragraph 70, the parties to
4 the dispute shall follow the procedures set forth in the paragraph determined
5 by EPA and/or DTSC to be applicable. However, if Performing Settling
6 Defendants ultimately appeal to the Court to resolve the dispute, the Court
7 shall determine which paragraph is applicable in accordance with the
8 standards of applicability set forth in Paragraphs 69 and 70.

9 69. Record Review. Formal dispute resolution for disputes pertaining to
10 the selection or adequacy of any response action and all other disputes that are
11 accorded review on the administrative record under applicable principles of
12 administrative law shall be conducted pursuant to the procedures set forth in this
13 Paragraph. For purposes of this Paragraph, the adequacy of any response action
14 includes, without limitation, the adequacy or appropriateness of plans, procedures
15 to implement plans, or any other items related to implementation of the response
16 action requiring approval by EPA and/or DTSC under this Consent Decree, and the
17 adequacy of the performance of response actions taken pursuant to this Consent
18 Decree. Nothing in this Consent Decree shall be construed to allow any dispute by
19 Settling Defendants regarding the validity of the provisions of the ROD or any
20 Consent Decree ROD Amendment.

21 a. An administrative record of the dispute shall be maintained by
22 EPA and/or DTSC and shall contain all statements of position, including
23 supporting documentation, submitted pursuant to this Section. Where
24 appropriate, EPA and/or DTSC may allow submission of supplemental
25 statements of position by the parties to the dispute.

26 b. The Director of the Superfund Division, EPA Region IX, and/or
27 a representative of DTSC will issue a final administrative decision resolving
28 the dispute based on the administrative record described in Paragraph 69(a).

1 This decision shall be binding upon Performing Settling Defendants, subject
2 only to the right to seek judicial review pursuant to Paragraphs 69(c) and
3 73(d).

4 c. Any administrative decision made by EPA and/or DTSC
5 pursuant to Paragraph 69(b) shall be reviewable by this Court, provided that
6 a motion for judicial review of the decision is filed by Performing Settling
7 Defendants with the Court and served on all Parties within 30 days after
8 receipt of EPA's and/or DTSC's decision. The motion shall include a
9 description of the matter in dispute, the efforts made by the parties to resolve
10 it, the relief requested, and the schedule, if any, within which the dispute
11 must be resolved to ensure orderly implementation of this Consent Decree.
12 The United States on behalf of EPA and/or a representative of DTSC may
13 file a response to Performing Settling Defendants' motion.

14 d. In proceedings on any dispute governed by this Paragraph,
15 Performing Settling Defendants shall have the burden of demonstrating that
16 the decision of the Superfund Division Director or the representative of
17 DTSC is arbitrary and capricious or otherwise not in accordance with law.
18 Judicial review of EPA's and/or DTSC's decision shall be on the
19 administrative record compiled pursuant to Paragraph 69(a).

20 70. Formal dispute resolution for disputes that neither pertain to the
21 selection or adequacy of any response action nor are otherwise accorded review on
22 the administrative record under applicable principles of administrative law shall be
23 governed by this Paragraph.

24 a. Following receipt of a Settling Defendant's Statement of
25 Position submitted pursuant to Paragraph 68(b), the Director of the
26 Superfund Division, EPA Region IX and/or a representative of DTSC will
27 issue a final decision resolving the dispute. The Superfund Division
28 Director's and/or a representative of DTSC's decision shall be binding on

1 Performing Settling Defendants unless, within 30 days after receipt of the
 2 decision, Performing Settling Defendants file with the Court and serve on
 3 the parties a motion for judicial review of the decision setting forth the
 4 matter in dispute, the efforts made by the parties to resolve it, the relief
 5 requested, and the schedule, if any, within which the dispute must be
 6 resolved to ensure orderly implementation of the Consent Decree. The
 7 United States on behalf of EPA and/or a representative of DTSC may file a
 8 response to Performing Settling Defendants' motion.

9 b. Notwithstanding Section I (Background) Paragraph N
 10 (CERCLA Section 113(j) Record Review of ROD and Work) judicial
 11 review of any dispute governed by this Paragraph shall be governed by
 12 applicable principles of law.

13 71. The invocation of formal dispute resolution procedures under this
 14 Section shall not extend, postpone or affect in any way any obligation of
 15 Performing Settling Defendants under this Consent Decree, not directly in dispute
 16 or necessarily affected thereby, unless EPA and/or DTSC or the Court agrees
 17 otherwise. Stipulated penalties with respect to the disputed matter shall continue to
 18 accrue but payment shall be stayed pending resolution of the dispute.
 19 Notwithstanding the stay of payment, stipulated penalties shall accrue from the
 20 first day of noncompliance with any applicable provision of this Consent Decree.
 21 In the event that Performing Settling Defendants do not prevail on the disputed
 22 issue, stipulated penalties shall be assessed and paid as provided in Section XX
 23 (Stipulated Penalties).

24 **XX. STIPULATED PENALTIES**

25 72. Performing Settling Defendants shall be liable for stipulated penalties
 26 in the amounts set forth in Paragraphs 73 and 74 to the United States and DTSC for
 27 failure to comply with the requirements of this Consent Decree specified below,
 28 unless excused under Section XVIII (Force Majeure) or Section XIX (Dispute

Resolution). “Compliance” by Performing Settling Defendants shall include completion of all payments and activities required under this Consent Decree or any plan, report, or other deliverable approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans, reports, or other deliverables approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

73. Stipulated Penalty Amounts - Work (Including Payments and Excluding Plans, Reports, and Other Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 73(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,500	15th through 30th day
\$5,000	31st day and beyond

b. Compliance Milestones. Failure to submit or perform any of the following within the specified time schedule provided for in this Decree shall incur the stipulated penalties set out in Paragraph 73(a).

1. Initiation of Construction of Remedial Action for each OU
2. Completion of Construction of Remedial Action for each OU
3. Achievement of Operational and Functional Status for each OU
4. Timely Payment for Past Response Costs, Interim Response Costs and Future Response Costs as required under this Consent Decree

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74. Stipulated Penalty Amounts-Plans, Reports, and Other Deliverables

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other plans or deliverables pursuant to the Consent Decree.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 750	1st through 14th day
\$1,250	15th through 30th day
\$1,750	31st day and beyond

75. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 90 (“Work Takeover”), Performing Settling Defendants shall be liable for a stipulated penalty in the amount of \$1,000,000 (One Million Dollars). Stipulated Penalties under this Paragraph are in addition to the remedies available under Paragraphs 47 (Funding for Work Takeover) and 93(Work Takeover). The imposition of any such penalty will be subject to the provisions of Section XIX (Dispute Resolution).

76. Each Contributing Settling Defendant, Ability-To-Pay Settling Defendant and De Minimis Settling Defendant shall be liable for stipulated penalties in the following amounts for each day that it fails to make payments of monies as required by this Consent Decree.

Contributing Settling Defendants	\$1,000
Ability-To-Pay Settling Defendants	\$ 250
De Minimis Settling Defendants	\$ 250

77. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, whichever is later, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after

1 EPA's receipt of such submission until the date that EPA notifies Performing
2 Settling Defendants of any deficiency; (b) with respect to a decision by the
3 Director of the Superfund Division, EPA Region IX, under Paragraph 69 or 70 of
4 Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st
5 day after the date that Performing Settling Defendants' reply to EPA's Statement
6 of Position is received until the date that the Director issues a final decision
7 regarding such dispute; or (c) with respect to judicial review by this Court of any
8 dispute under Section XIX (Dispute Resolution), during the period, if any,
9 beginning on the 31st day after the Court's receipt of the final submission
10 regarding the dispute until the date that the Court issues a final decision regarding
11 such dispute. Nothing in this Consent Decree shall prevent the simultaneous
12 accrual of separate penalties for separate violations of this Consent Decree.

13 78. Following EPA's determination that Performing Settling Defendants
14 have failed to comply with a requirement of this Consent Decree, or DTSC's
15 determination that Performing Settling Defendants have failed to comply with
16 Paragraph 55, EPA, or as appropriate DTSC, will give Performing Settling
17 Defendants written notification of the same and describe the noncompliance. If
18 such noncompliance relates to a deficiency in a submittal, Performing Settling
19 Defendants will have 30 days within which to cure such deficiency. For any other
20 non-compliance, it is within EPA's discretion whether to give the Performing
21 Settling Defendants an opportunity to cure the deficiency prior to a demand for
22 penalties. EPA or DTSC may send Performing Settling Defendants a written
23 demand for the payment of the penalties. Penalties shall accrue as provided in the
24 preceding Paragraph whether or not EPA has notified Performing Settling
25 Defendants of a violation.

26 79. All penalties accruing under this Section shall be due and payable to
27 the United States and DTSC within 30 days after Performing Settling Defendants'
28 receipt from EPA, or, as appropriate, DTSC, of a demand for payment of the

penalties, unless Performing Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties, and shall be made in accordance with Paragraph 55(b) (Instructions for Future Response Costs Payments). All payments to DTSC under this section shall be made in accordance with Paragraph 55(d).

80. Penalties shall continue to accrue as provided in Paragraph 77 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 30 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Performing Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in Paragraph 80.c.;

c. If the District Court's decision is appealed by any Party, Performing Settling Defendants shall pay all accrued penalties determined by the District Court to be owed to the United States into an Interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Performing Settling Defendants to the extent that they prevail.

81. If Performing Settling Defendants fail to pay stipulated penalties when due, Performing Settling Defendants shall pay Interest on the unpaid

1 stipulated penalties as follows: (a) if Performing Settling Defendants have timely
 2 invoked dispute resolution such that the obligation to pay stipulated penalties has
 3 been stayed pending the outcome of the dispute resolution, Interest shall accrue
 4 from the date stipulated penalties are due pursuant to Paragraph 80 until the date of
 5 payment; and (b) if Performing Settling Defendants fail to timely invoke dispute
 6 resolution, Interest shall accrue from the date of demand under Paragraph 78 until
 7 the date of payment. If Performing Settling Defendants fail to pay stipulated
 8 penalties and Interest when due, the United States may institute proceedings to
 9 collect the penalties and Interest.

10 82. The payment of penalties and Interest, if any, shall not alter in any
 11 way Performing Settling Defendants' obligation to complete the performance of
 12 the Work required under this Consent Decree.

13 83. Nothing in this Consent Decree shall be construed as prohibiting,
 14 altering, or in any way limiting the ability of the United States or DTSC to seek
 15 any other remedies or sanctions available by virtue of Performing Settling
 16 Defendants' violation of this Decree or of the statutes and regulations upon which
 17 it is based, including, but not limited to, penalties pursuant to Section 122(l) of
 18 CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States or DTSC
 19 shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any
 20 violation for which a stipulated penalty is provided in this Consent Decree, except
 21 in the case of a willful violation of the Consent Decree.

22 84. Notwithstanding any other provision of this Section, the United States
 23 or DTSC may, in its unreviewable discretion, waive any portion of stipulated
 24 penalties that have accrued pursuant to this Consent Decree.

25 **XXI. COVENANTS BY PLAINTIFFS**

26 85. In consideration of the actions that will be performed and the
 27 payments that will be made by Settling Defendants under this Consent Decree, and
 28 except as specifically provided in this Paragraph and in Paragraphs 86, 87 (United

1 States' Pre- and Post-Certification Reservations) and 89 (General Reservations of
2 Rights), the United States covenants not to sue or to take administrative action
3 against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42
4 U.S.C. §§ 9606 and 9607(a), and DTSC covenants not to sue or take administrative
5 action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42
6 U.S.C. § 9607(a) or Health and Safety Code § 25358.3 and 25360, relating to the
7 Site. These covenants shall take effect for each Ability-to-Pay Settling Defendant,
8 each De Minimis Settling Defendant and, except with respect to future obligations
9 pursuant to this Consent Decree, Performing Settling Defendants, upon receipt by
10 EPA and DTSC from each such Settling Defendant of the payments required by
11 Section XVI (Payments for Past Response Costs) and any Interest or stipulated
12 penalties due thereon under Paragraph 57 (Interest) or Section XX (Stipulated
13 Penalties). These covenants not to sue shall take effect for each Contributing
14 Settling Defendant upon EPA's and DTSC's receipt of notification, pursuant to
15 Paragraph 6.d., that such Contributing Settling Defendant has discharged its
16 payment obligations pursuant to this Decree. With respect to future obligations
17 pursuant to this Consent Decree, these covenants shall take effect for Performing
18 Settling Defendants upon Certification of Completion of Remedial Action by EPA
19 pursuant to Paragraph 50(b) of Section XIV (Certificate of Completion). These
20 covenants are conditioned upon the satisfactory performance by Settling
21 Defendants of their obligations under this Consent Decree. These covenants
22 extend only to Settling Defendants and do not extend to any other person.

23 a. This covenant not to sue for Ability-to-Pay Settling Defendants
24 is also conditioned upon the veracity and completeness of any financial
25 information previously provided to EPA by Ability-to-Pay Settling
26 Defendants. If any such financial information is subsequently determined by
27 EPA to be false or, in any material respect, inaccurate, the submitting
28 Ability-to-Pay Settling Defendant shall forfeit all payments made pursuant

1 to this Consent Decree and this covenant not to sue and the contribution
2 protection shall be null and void. Such forfeiture shall not constitute
3 liquidated damages and shall not in any way foreclose the United States'
4 right to pursue any other causes of action arising from the Ability-to-Pay
5 Settling Defendant's false or materially inaccurate information.

6 b. Notwithstanding any other provision in this Consent Decree,
7 the United States and DTSC reserve, and this Consent Decree is without
8 prejudice to, the right to institute proceedings against any individual De
9 Minimis Settling Defendant in this action or a new action or to issue an
10 administrative order to any individual De Minimis Settling Defendant
11 seeking to compel that De Minimis Settling Defendant to perform response
12 actions relating to the Site, and/or to reimburse the United States for
13 additional costs of response, if total costs of implementing the Remedial
14 Action in the ROD, or any amendments thereto, are incurred by the United
15 States or any other person in excess of \$35,000,000 (Thirty-Five Million
16 Dollars) (exclusive of EPA's oversight costs) from the Effective Date of this
17 Consent Decree until issuance of the Certificate of Completion of the
18 Remedial Action.

19 86. United States' Pre-Certification Reservations. Subject only to the
20 provisions of Paragraph 13(b) of this Consent Decree, the United States and DTSC
21 reserve, and this Consent Decree is without prejudice to, the right to institute
22 proceedings in this action or in a new action, and/or to issue an administrative
23 order, seeking to compel Performing Settling Defendants to perform further
24 response actions at the Site and/or to pay the United States or DTSC for additional
25 costs of response if, (a) prior to Certification of Completion of the Remedial
26 Action, (1) conditions at the Site, previously unknown to EPA or DTSC, are
27 discovered, or (2) information, previously unknown to EPA or DTSC, is received,
28 in whole or in part, and (b) EPA, after reasonable opportunity for review and

1 comment by DTSC, determines that these previously unknown conditions or
2 information together with any other relevant information indicates that the
3 Remedial Action is not protective of human health or the environment.

4 87. United States' Post-Certification Reservations. Subject only to the
5 provisions of Paragraph 13(b) of this Consent Decree, the United States and DTSC
6 reserve, and this Consent Decree is without prejudice to, the right to institute
7 proceedings in this action or in a new action, and/or to issue an administrative
8 order, seeking to compel Performing Settling Defendants to perform further
9 response actions at the Site and/or to pay the United States and DTSC for
10 additional costs of response if, (a) subsequent to Certification of Completion of the
11 Remedial Action, (1) conditions at the Site, previously unknown to EPA or DTSC,
12 are discovered, or (2) information, previously unknown to EPA and DTSC, is
13 received, in whole or in part, and (b) EPA, after reasonable opportunity for review
14 and comment by DTSC, determines that these previously unknown conditions or
15 this information together with other relevant information indicate that the
16 Remedial Action is not protective of human health or the environment.

17 88. For purposes of Paragraph 86 (United States' Pre-Certification
18 Reservations), the information and the conditions known to EPA or DTSC will
19 include only that information and those conditions known to EPA as of the date
20 this Consent Decree is lodged. For purposes of Paragraph 87 (United States' Post-
21 Certification Reservations), the information and the conditions known to EPA or
22 DTSC shall include only that information and those conditions known to EPA as of
23 the date of Certification of Completion of the Remedial Action and set forth in the
24 ROD, the administrative record supporting the ROD, the post-ROD administrative
25 record, or in any information received by EPA or DTSC pursuant to the
26 requirements of this Consent Decree prior to Certification of Completion of the
27 Remedial Action.
28

1 89. General Reservations of Rights. The United States and DTSC
2 reserve, and this Consent Decree is without prejudice to, all rights against Settling
3 Defendants with respect to all matters not expressly included within Plaintiff's
4 covenants. Notwithstanding any other provision of this Consent Decree, the
5 United States and DTSC reserve all rights against Performing Settling Defendants,
6 and all rights other than those set out in subsection (i), below, against Contributing
7 Settling Defendants and De Minimis Settling Defendants, and all rights other than
8 those set out in subsections (i) and (j), below, against Ability-to-Pay Settling
9 Defendants, with respect to:

10 a. liability for failure by such Settling Defendant to meet a
11 requirement of this Consent Decree;

12 b. liability arising from the past, present, or future disposal,
13 release, or threat of release of Waste Material outside of the Site;

14 c. liability based on the ownership of the Site when such
15 ownership commences after signature of this Consent Decree by Settling
16 Defendants;

17 d. liability based on the operation of the Site when such operation
18 commences after signature of this Consent Decree by Settling Defendants
19 and does not arise from Settling Defendants' performance of the Work;

20 e. liability based on transportation, treatment, storage, or disposal,
21 or arrangement for transportation, treatment, storage or disposal of Waste
22 Material at or from the Site, other than as provided in the ROD, the Work, or
23 otherwise ordered by EPA, after signature of this Consent Decree by Settling
24 Defendants;

25 f. liability for damages for injury to, destruction of, or loss of
26 natural resources, and for the costs of any natural resource damage
27 assessments;

28 g. criminal liability;

1 h. liability for violations of federal or state law which occur
2 during or after implementation of the Work;

3 i. liability, prior to Certification of Completion of the Remedial
4 Action, for additional response actions that EPA determines are necessary to
5 achieve and maintain Performance Standards, or to carry out and maintain
6 the effectiveness of the remedy set forth in the ROD, but that cannot be
7 required pursuant to Paragraph 13 (Modifications of SOW or Related Work
8 Plans); and

9 j. liability for costs of removal or remedial action involving
10 aquifers underlying the Gaspur Aquifer, including the Exposition Aquifer
11 subject to the provisions of Paragraph 13(b).

12 90. Work Takeover.

13 a. In the event EPA determines that Performing Settling
14 Defendants have (1) ceased implementation of any portion of the Work, or
15 (2) are seriously or repeatedly deficient or late in their performance of the
16 Work, or (3) are implementing the Work in a manner that may cause an
17 endangerment to human health or the environment, EPA may issue a written
18 notice (“Work Takeover Notice”) to Performing Settling Defendants. Any
19 Work Takeover Notice issued by EPA will specify the grounds upon which
20 such notice was issued and will provide Performing Settling Defendants a
21 period of 30 days within which to remedy the circumstances giving rise to
22 EPA’s issuance of such notice.

23 b. If, after expiration of the 30-day notice period specified in
24 Paragraph 85a., Performing Settling Defendants have not remedied to EPA’s
25 satisfaction the circumstances giving rise to EPA’s issuance of the relevant
26 Work Takeover Notice, EPA may at any time thereafter assume the
27 performance of all or any portion(s) of the Work as EPA deems necessary
28 (“Work Takeover”). EPA will notify Performing Settling Defendants in

1 writing (which writing may be electronic) if EPA determines that
 2 implementation of a Work Takeover is warranted under this Paragraph 90.b.
 3 Funding of Work Takeover costs is addressed under Paragraph 47.

4 c. Performing Settling Defendants may invoke the procedures set
 5 forth in Paragraph 69 (Record Review), to dispute EPA's implementation of
 6 a Work Takeover under Paragraph 90. However, notwithstanding
 7 Performing Settling Defendants' invocation of such dispute resolution
 8 procedures, and during the pendency of any such dispute, EPA may in its
 9 sole discretion commence and continue a Work Takeover under Paragraph
 10 90 until the earlier of (1) the date that Performing Settling Defendants
 11 remedy, to EPA's satisfaction, the circumstances giving rise to EPA's
 12 issuance of the relevant Work Takeover Notice, or (2) the date that a final
 13 decision is rendered in accordance with Paragraph 69 (Record Review)
 14 requiring EPA to terminate such Work Takeover.

15 91. Notwithstanding any other provision of this Consent Decree, the
 16 United States and DTSC retain all authority and reserve all rights to take any and
 17 all response actions authorized by law.

18 **XXII. COVENANTS BY SETTLING DEFENDANTS**

19 92. Covenants by Settling Defendants. Subject to the reservations in
 20 Paragraph 94, Settling Defendants covenant not to sue and agree not to assert any
 21 claims or causes of action against the United States or DTSC with respect to the
 22 Site, and this Consent Decree, including, but not limited to:

23 a. any direct or indirect claim for reimbursement from the
 24 Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 107,
 25 111, 112, 113 or any other provision of law;

26 b. any claims under CERCLA Sections 107 or 113, RCRA
 27 Section 7002(a), 42 U.S.C § 6972(a), or state law regarding the Site and this
 28 Consent Decree; or

1 c. any claims arising out of response actions at or in connection
2 with the Site, including any claim under the United States Constitution, the
3 California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access
4 to Justice Act, 28 U.S.C. § 2412, or at common law.

5 93. Except as provided in Paragraph 96 (Claims Against De Minimis
6 Parties, Ability-to-Pay Parties, and Other Persons That Received Special Notice),
7 and Paragraph 101 (Res Judicata and Other Defenses), the covenants in this
8 Section shall not apply if the United States or DTSC brings a cause of action or
9 issues an order pursuant to any of the reservations in Section XXI (Covenants by
10 Plaintiffs), other than in Paragraphs 89.a (claims for failure to meet a requirement
11 of the Consent Decree), 89.g (criminal liability), and 89.h (violations of
12 federal/state law during or after implementation of the Work), but only to the
13 extent that Settling Defendants' claims arise from the same response action,
14 response costs, or damages that the United States or DTSC is seeking pursuant to
15 the applicable reservation.

16 94. Settling Defendants reserve, and this Consent Decree is without
17 prejudice to, claims against the United States or DTSC, subject to the provisions of
18 Chapter 171 of Title 28 of the United States Code, and brought pursuant to any
19 statute other than CERCLA or RCRA and for which the waiver of sovereign
20 immunity is found in a statute other than CERCLA or RCRA, for money damages
21 for injury or loss of property or personal injury or death caused by the negligent or
22 wrongful act or omission of any employee of the United States as that term is
23 defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or
24 employment under circumstances where the United States, if a private person,
25 would be liable to the claimant in accordance with the law of the place where the
26 act or omission occurred. However, the foregoing shall not include any claim
27 based on EPA's selection of response actions, or the oversight or approval of
28 Performing Settling Defendants' plans, reports, other deliverables or activities.

1 95. Nothing in this Consent Decree shall be deemed to constitute
2 preauthorization of a claim within the meaning of Section 111 of CERCLA,
3 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

4 96. Claims against De Minimis Parties, Ability-to-Pay Parties and Other
5 Persons That Received Special Notice. Settling Defendants agree not to assert any
6 claims or causes of action and to waive all claims or causes of action (including but
7 not limited to claims or causes of action under Sections 107(a) and 113 of
8 CERCLA) that they may have for response costs relating to the Site against any
9 person that has entered or in the future enters into a final settlement based on
10 limited ability to pay with EPA with respect to the Site. Except as to total costs of
11 implementing the Remedial Action in the ROD, or any amendments thereto,
12 incurred by the United States or any other person in excess of \$35,000,000 (Thirty-
13 Five Million Dollars) (exclusive of EPA's oversight costs) from the Effective Date
14 until issuance of the Certificate of Completion of the Remedial Action, Settling
15 Defendants agree not to assert any claims or causes of action and to waive all
16 claims or causes of action (including but not limited to claims or causes of action
17 under Sections 107(a) and 113 of CERCLA) that they may have for response costs
18 relating to the Site against any person that has entered or in the future enters into a
19 CERCLA Section 122(g) de minimis settlement with EPA with respect to the Site.
20 For a period of 30 months from the Effective Date of this Consent Decree, Settling
21 Defendants agree not to assert any claims or causes of action and to waive all
22 claims and causes of action (including but not limited to claims or causes of action
23 under Sections 107(a) and 113 of CERCLA) that they may have for response
24 actions relating to the Site against any person not a party to this Consent Decree
25 that received notice under CERCLA Section 122(e)(1), 42 U.S.C § 9622(e)(1),
26 relating to the Cooper Drum Company Superfund Site. These waivers shall not
27 apply with respect to any defense, claim, or cause of action that a Settling
28

1 Defendant may have against any person if such person asserts a claim or cause of
 2 action relating to the Site against such Settling Defendant.

3 **XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

4 97. Except as provided in Paragraph 96 (Claims against De Minimis
 5 Parties, Ability to Pay Parties, and Persons That Received Special Notice), nothing
 6 in this Consent Decree shall be construed to create any rights in, or grant any cause
 7 of action to, any person not a Party to this Consent Decree. Except as provided in
 8 Paragraph 96 (Claims against De Minimis Parties, Ability to Pay Parties, and
 9 Persons That Received Special Notice), each of the Parties expressly reserves any
 10 and all rights (including, but not limited to, pursuant to Section 113(f)(2)-(3) of
 11 CERCLA, 42 U.S.C. § 9613(f)(2)-(3), defenses, claims, demands, and causes of
 12 action that each Party may have with respect to any matter, transaction, or
 13 occurrence relating in any way to the Site against any person not a Party hereto.
 14 Nothing in this Consent Decree diminishes the right of the United States, pursuant
 15 to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any
 16 such persons to obtain additional response costs or response action and to enter
 17 into settlements that give rise to contribution protection pursuant to Section
 18 113(f)(2).

19 98. The Parties agree, and by entering this Consent Decree this Court
 20 finds, that this Consent Decree constitutes a judicially approved settlement for
 21 purposes of Section 113(f)(2) of CERCLA, 42 U.S.C § 9613(f)(2), and that each
 22 Settling Defendant is entitled, as of the Effective Date, to protection from
 23 contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as
 24 may be otherwise provided by law, for “matters addressed” in this Consent Decree.
 25 The “matters addressed” in this Consent Decree are all response actions taken or to
 26 be taken and all response costs incurred or to be incurred, at or in connection with
 27 the Site, not to include response actions to be taken and response costs to be
 28 incurred in connection with the remediation of aquifers underlying the Gaspar

1 Aquifer, including the Exposition Aquifer, by the United States or DTSC or any
2 other person; provided, however, that if the United States or DTSC exercises rights
3 under the reservations in Section XXI (Covenants by Plaintiffs) other than
4 Paragraphs 89.a (claims for failure to meet a requirement of the Consent Decree),
5 89.g (criminal liability), or 89.h (violations of federal law during or after
6 implementation of the Work), the “matters addressed” in this Consent Decree will
7 no longer include those response costs or response actions.

8 99. Each Settling Defendant shall, with respect to any suit or claim
9 brought by it for matters related to this Consent Decree, notify the United States
10 and DTSC in writing no later than 60 days prior to the initiation of such suit or
11 claim.

12 100. Each Settling Defendant shall, with respect to any suit or claim
13 brought against it for matters related to this Consent Decree, notify in writing the
14 United States and DTSC within ten days after service of the complaint on such
15 Settling Defendant. In addition, each Settling Defendant shall notify the United
16 States and DTSC within ten days after service or receipt of any Motion for
17 Summary Judgment and within ten days after receipt of any order from a court
18 setting a case for trial.

19 101. Res Judicata and Other Defenses. (a) In any subsequent
20 administrative or judicial proceeding initiated by the United States or DTSC for
21 injunctive relief, recovery of response costs, or other relief relating to the Site,
22 Settling Defendants shall not assert, and may not maintain, any defense or claim
23 based upon the principles of waiver, res judicata, collateral estoppel, issue
24 preclusion, claim-splitting, or other defenses based upon any contention that the
25 claims raised by the United States or DTSC in the subsequent proceeding were or
26 should have been brought in the instant case; provided, however, that nothing in
27 this Paragraph affects the enforceability of the covenants not to sue set forth in
28 Section XXI (Covenants by Plaintiffs); (b) In any subsequent administrative or

1 judicial proceeding initiated by the United States or DTSC for injunctive relief,
 2 recovery of response costs, or other relief relating to aquifers underlying the
 3 Gaspur Aquifer, including the Exposition Aquifer, Settling Defendants shall not
 4 assert, and may not maintain, any defense based on the contention that such claims
 5 should have been brought in the instant case and/or are res judicata or estopped by
 6 termination of the Order as provided in Paragraph 121 of this Consent Decree.

7 **XXIV. ACCESS TO INFORMATION**

8 102. Settling Defendants shall provide to EPA and DTSC, upon request,
 9 copies of all records, reports, documents and other information (including records,
 10 reports, documents, and other information in electronic form) (hereinafter referred
 11 to as "Records") within their possession or control or that of their contractors or
 12 agents relating to activities at the Site or to the implementation of this Consent
 13 Decree, including, but not limited to, sampling, analysis, chain of custody records,
 14 manifests, trucking logs, receipts, reports, sample traffic routing, correspondence,
 15 or other documents or information related to the Work. Settling Defendants shall
 16 also make available to EPA, for purposes of investigation, information gathering,
 17 or testimony related to the Site, their employees, agents, or representatives with
 18 knowledge of relevant facts concerning the performance of the Work.

19 103. Business Confidential and Privileged Documents.

20 a. Settling Defendants may assert business confidentiality claims
 21 covering part or all of the Records submitted to Plaintiffs under this Consent
 22 Decree to the extent permitted by and in accordance with Section 104(e)(7)
 23 of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records
 24 determined to be confidential by EPA will be afforded the protection
 25 specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality
 26 accompanies Records when they are submitted to EPA or DTSC, or if EPA
 27 has notified Settling Defendants that the Records are not confidential under
 28 the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart

1 B, the public may be given access to such Records without further notice to
2 Settling Defendants.

3 b. Settling Defendants may assert that certain Records are
4 privileged under the attorney-client privilege or any other privilege
5 recognized by federal law. If Settling Defendants assert such a privilege in
6 lieu of providing Records, they shall provide Plaintiffs with the following:
7 (1) the title of the Record; (2) the date of the Record; (3) the name, title,
8 affiliation (e.g., company or firm), and address of the author of the Record;
9 (4) the name and title of each addressee and recipient; (5) a description of
10 the contents of the Record; and (6) the privilege asserted by Settling
11 Defendants. If a claim of privilege applies only to a portion of a Record, the
12 Record shall be provided to the United States and DTSC in redacted form to
13 mask the privileged portion only. Settling Defendants shall retain all
14 Records that they claim to be privileged until the United States, after
15 reasonable opportunity for review and comment by DTSC, has had a
16 reasonable opportunity to dispute the privilege claim and any such dispute
17 has been resolved in the Settling Defendants' favor.

18 c. No Records created or generated pursuant to the requirements
19 of this Consent Decree shall be withheld from the United States or DTSC on
20 the grounds that they are privileged or confidential.

21 104. No claim of confidentiality or privilege shall be made with respect to
22 any data associated with performance of the Work, including, but not limited to, all
23 sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or
24 engineering data from the Site.

25 **XXV. RETENTION OF RECORDS**

26 105. Until ten years after Settling Defendants' receipt of EPA's notification
27 pursuant to Paragraph 50(b) (Completion of the Work), each Settling Defendant
28 shall preserve and retain all non-identical copies of Records (including Records in

1 electronic form) now in its possession or control or that come into its possession or
2 control that relate in any manner to its liability under CERCLA with respect to the
3 Site, provided, however, that Settling Defendants who are potentially liable as
4 owners or operators of the Site must retain, in addition, all Records that relate to
5 the liability of any other person under CERCLA with respect to the Site.
6 Performing Settling Defendants must also retain, and instruct their contractors and
7 agents to preserve, for the same period of time specified above, all non-identical
8 copies of the last draft or final version of any Records (including Records in
9 electronic form) now in their possession or control or which come into their
10 possession or control that relate in any manner to the performance of the Work,
11 provided, however, that Performing Settling Defendants (and their contractors and
12 agents) must retain, in addition, copies of all data generated during the
13 performance of the Work and not contained in the aforementioned Records
14 required to be retained. Each of the above record retention requirements shall
15 apply regardless of any corporate retention policy to the contrary.

16 106. At the conclusion of this record retention period, Settling Defendants
17 shall notify the United States and DTSC at least 30 days prior to the destruction of
18 any such Records, and, upon request by the United States and DTSC, Settling
19 Defendants shall promptly deliver any such Records to EPA or, as appropriate, to
20 DTSC. Settling Defendants may assert that certain Records are privileged under
21 the attorney-client privilege or any other privilege recognized by federal law. If
22 Settling Defendants assert such a privilege, they shall provide the Plaintiffs with
23 the following: (a) the title of the Record; (b) the date of the Record; (c) the name,
24 title, affiliation (e.g., company or firm), and address of the author of the Record;
25 (d) the name and title of each addressee and recipient; (e) a description of the
26 subject of the Record; and (f) the privilege asserted by Settling Defendants. If a
27 claim of privilege applies only to a portion of a Record, the Record shall be
28 provided to the United States and DTSC in redacted form to mask the privileged

1 portion only. Settling Defendants shall retain all Records that they claim to be
2 privileged until the United States has had a reasonable opportunity to dispute the
3 privilege claim and any such dispute has been resolved in Settling Defendants'
4 favor. However, no Records created or generated pursuant to the requirements of
5 this Consent Decree shall be withheld on the grounds that they are privileged or
6 confidential.

7 107. Each Settling Defendant certifies individually that, to the best of its
8 knowledge and belief, after thorough inquiry, it has not altered, mutilated,
9 discarded, destroyed, or otherwise disposed of any Records (other than identical
10 copies) relating to its potential liability regarding the Site since the earlier of
11 notification of potential liability by the United States or DTSC or the filing of suit
12 against it regarding the Site and that it has fully complied with any and all EPA or
13 DTSC requests for information regarding the Site pursuant to Section 104(e) and
14 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of
15 RCRA, 42 U.S.C. § 6927, or §§ 25185 and 25358.1 of the Health and Safety Code.

16 108. The Ability-to-Pay Settling Defendants hereby certify that, to the best
17 of their knowledge and belief, after thorough inquiry, they have submitted to EPA
18 financial information that at the time of submittal fairly, accurately, and materially
19 set forth their financial circumstances. The Ability-to-Pay Settling Defendants also
20 certify that those circumstances have either not materially changed between the
21 time the financial information was submitted to EPA and the time of Consent
22 Decree execution or, if circumstances have materially changed, their financial
23 position is now worse than it was at the time the financial documents were
24 submitted.

25 **XXVI. NOTICES AND SUBMISSIONS**

26 109. Whenever, under the terms of this Consent Decree, written notice is
27 required to be given or a report or other document is required to be sent by one
28 Party to another, it shall be directed to the individuals at the addresses specified

1 below, unless those individuals or their successors give notice of a change to the
2 other Parties in writing. All notices and submissions shall be considered effective
3 upon receipt, unless otherwise provided. Written notice as specified herein shall
4 constitute complete satisfaction of any written notice requirement of the Consent
5 Decree with respect to the United States, EPA, and the Settling Defendants,
6 respectively. Notices required to be sent to EPA, and not to the United States,
7 under the terms of this Consent Decree, should not be sent to the U.S. Department
8 of Justice:

9
10 As to the United States:

11 Chief, Environmental Enforcement Section
12 Environment and Natural Resources Division
13 U.S. Department of Justice
14 P.O. Box 7611
15 Washington, D.C. 20044-7611
16 Re: DJ # 90-11-2-09084

17 and

18 Superfund Division Director
19 United States Environmental Protection Agency
20 Region IX
21 75 Hawthorne St.
22 San Francisco, CA 94105
23 Re: Cooper Drum Superfund Site

24 As to EPA:

25 Karen Jurist
26 EPA Project Coordinator
27 United States Environmental Protection Agency
28 Region IX
75 Hawthorne St.
San Francisco, CA 94105
Re: Cooper Drum Superfund Site

As to the Regional Financial Management Officer:

David Wood, Chief, Cost Accounting
United States Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105
Re: Cooper Drum Superfund Site

As to the Performing Settling Defendants:

Kenny Ogilvie
CDCPG Project Coordinator
EHS Support LLC
110 Kentzel Road
Pittsburgh, PA 15237
412-855-3047 (Direct)
kenny.ogilvie@ehs-support.com

Daniel E. Vineyard
CDCPG Common Counsel
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, TX 77010
713-752-4277
dvineyard@jw.com

As to DTSC:

Lori Parnass
Hazardous Substances Scientist
Brownfields and Environmental Reuse Program
Department of Toxic Substances Control
9211 Oak Dale Avenue
Chatsworth, CA 91311
Phone: (818) 717-6597
Lori.Parnass@dtsc.ca.gov

As to Contributing Settling Defendants, Ability-To-Pay Settling Defendants and De Minimis Settling Defendants: See names and addresses on Appendices F, G and H to this Consent Decree

XXVII. RETENTION OF JURISDICTION

110. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution).

XXVIII. APPENDICES

111. The following appendices are incorporated into this Consent Decree:

“Appendix A” is the ROD.

“Appendix B” is the description of the Site.

“Appendix C” is the SOW.

“Appendix D” is collectively the two Remedial Design Reports completed by EPA.

“Appendix E” is the list of all Settling Defendants.

“Appendix F” is the list of the Ability-to-Pay Settling Defendants and the amounts they are to pay to the United States pursuant to this Consent Decree.

“Appendix G” is the list of De Minimis Settling Defendants and the amounts they are to pay to the United States pursuant to this Consent Decree.

“Appendix H” is the list of Contributing Settling Defendants and the amounts they are to pay to the Performing Settling Defendants pursuant to this Consent Decree.

“Appendix I” is the list of Performing Settling Defendants.

1 “Appendix J” is the form of Performance Guarantee selected by the
 2 Performing Settling Defendants and approved by the United States.

3 **XXIX. COMMUNITY INVOLVEMENT**

4 112. If requested by EPA, Performing Settling Defendants shall participate
 5 in community involvement activities pursuant to the Community Involvement Plan
 6 developed by EPA. Performing Settling Defendants shall reasonably cooperate
 7 with EPA in providing information regarding the Work to the public. As requested
 8 by EPA, Performing Settling Defendants shall participate in the preparation of
 9 such information for dissemination to the public and in public meetings that may
 10 be held or sponsored by EPA to explain activities at or relating to the Site.

11 **XXX. MODIFICATION**

12 113. Except as provided in Paragraph 13 (Modification of SOW or Related
 13 Work Plans), material modifications to this Consent Decree, including the SOW,
 14 shall be in writing, signed by the United States, DTSC and Settling Defendants,
 15 and shall be effective upon approval by the Court. Except as provided in
 16 Paragraph 13, non-material modifications to this Consent Decree, including the
 17 SOW, shall be in writing and shall be effective when signed by duly authorized
 18 representatives of the United States, and Settling Defendants. All modifications of
 19 the Consent Decree, other than the SOW, shall also be signed by DTSC. A
 20 modification to the SOW shall be considered material if it implements a Consent
 21 Decree ROD Amendment that fundamentally alters the basic features of the
 22 selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(ii). Before
 23 providing its approval to any modification to the SOW, the United States will
 24 provide DTSC with a reasonable opportunity to review and comment on the
 25 proposed modification.

26 114. Any modification that does not affect the obligations of or the
 27 protections afforded to Ability-to-Pay Settling Defendants, Contributing Settling
 28 Defendants or De Minimis Settling Defendants may be executed without the

1 signatures of Ability-to-Pay Settling Defendants, Contributing Settling Defendants
2 or De Minimis Settling Defendants.

3 115. Nothing in this Decree shall be deemed to alter the Court's power to
4 enforce, supervise or approve modifications to this Consent Decree.

5 **XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

6 116. This Consent Decree shall be lodged with the Court for a period of not
7 less than 30 days for public notice and comment in accordance with Section
8 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United
9 States and DTSC reserve the right to withdraw or withhold their consent if the
10 comments regarding the Consent Decree disclose facts or considerations which
11 indicate that the Consent Decree is inappropriate, improper, or inadequate.
12 Settling Defendants consent to the entry of this Consent Decree without further
13 notice.

14 117. If for any reason the Court should decline to approve this Consent
15 Decree in the form presented, this agreement is voidable at the sole discretion of
16 any Party and the terms of the agreement may not be used as evidence in any
17 litigation between the Parties.

18 **XXXII. SIGNATORIES/SERVICE**

19 118. Each undersigned representative of a Settling Defendant and DTSC to
20 this Consent Decree and the Assistant Attorney General for the Environment and
21 Natural Resources Division of the Department of Justice certifies that he or she is
22 fully authorized to enter into the terms and conditions of this Consent Decree and
23 to execute and legally bind such Party to this document.

24 119. Each Settling Defendant agrees not to oppose entry of this Consent
25 Decree by this Court or to challenge any provision of this Consent Decree unless
26 the United States or DTSC has notified Settling Defendants in writing that it no
27 longer supports entry of the Consent Decree.
28

1 120. Each Settling Defendant shall identify, on the attached signature page,
 2 the name, address and telephone number of an agent who is authorized to accept
 3 service of process by mail on behalf of that Party with respect to all matters arising
 4 under or relating to this Consent Decree. Settling Defendants agree to accept
 5 service in that manner and to waive the formal service requirements set forth in
 6 Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of
 7 this Court, including, but not limited to, service of a summons. Settling
 8 Defendants need not file an answer to the complaint in this action unless or until
 9 the court expressly declines to enter this Consent Decree.

10 **XXXIII. TERMINATION OF ORDER**

11 121. Upon entry of this Consent Decree, Unilateral Order 2009-07 is
 12 terminated as to such Settling Defendants.

13 **XXXIV. FINAL JUDGMENT**

14 122. This Consent Decree and its appendices constitute the final, complete,
 15 and exclusive agreement and understanding among the Parties regarding the
 16 settlement embodied in the Consent Decree. The Parties acknowledge that there
 17 are no representations, agreements or understandings relating to the settlement
 18 other than those expressly contained in this Consent Decree.

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1 123. Upon approval and entry of this Consent Decree by the Court, this
2 Consent Decree shall constitute a final judgment between and among the United
3 States, DTSC and Settling Defendants. The Court enters this judgment as a final
4 judgment under Federal Rules of Civil Procedure 54 and 58.

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6 SO ORDERED THIS _____ DAY OF _____, 20_____.
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10 _____
11 United States District Judge
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